No. 22-CV-7654

IN THE SUPREME COURT OF THE UNITED STATES

EMMANUELLA RICHTER,
Petitioner,

v.
CONSTANCE GIRARDEAU,
Respondent.

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

BRIEF FOR RESPONDENT

Team No. 14
Counsel for Respondent

QUESTIONS PRESENTED

I. The Free Speech Clause of the First Amendment was written to promote free and public debate even if said debate includes false statements. The actual malice standard, as extended to limited-purpose public figures, requires those who thrust themselves to the forefront of public controversy to meet a higher standard to recover on defamation claims. Is the actual malice standard constitutional when applied to limited-purpose public figures?

II. A valid, neutral law of general applicability does not violate the Free Exercise Clause of the First Amendment, even if it incidentally burdens a specific religious practice. The Physical Autonomy of Minors Act protects and enhances children's health, safety, and welfare regardless of religious belief. Is the Physical Autonomy of Minors Act a neutral, generally applicable law consistent with *Employment Division v. Smith*?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW vii

JURISDICTION vii

CONSTITUTIONAL PROVISIONS INVOLVED vii

STATEMENT OF THE CASE 1

1. Blood Banking: A "Central Tenant" of Kingdom Church's Faith 1

2. The Physical Autonomy of Minors Act and Delmont's Rising Concern for Blood Banking 3

3. Adam Suarez's Hospitalization and the Resulting Investigation 3

4. District Court Proceeding 5

5. Fifteenth Circuit Proceeding 5

SUMMARY OF THE ARGUMENT 6

ARGUMENT 7

I. THE APPLICATION OF THE ACTUAL MALICE STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES IS A CORNERSTONE PRECEDENT THAT SHOULD NOT BE QUESTIONED. 7

A. Holding Limited-Purpose Public Figures to the Actual Malice Standard is Consistent with the Original Meaning of the First Amendment. 8

B. Limited-Purpose Public Figures are Easily Distinguishable from Private Individuals. 10

C. This is Not the Case to Overturn a Concrete Precedent Like Actual Malice. 12

II. THE PHYSICAL AUTONOMY OF MINORS ACT IS A NEUTRAL, GENERALLY APPLICABLE LAW AND IS CONSISTENT WITH THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT. 15

A. The Physical Autonomy of Minors Act is a Neutral and Generally Applicable Law Because It Uses Clinical Language and Uniformly Applies to All Minors. 15

1. The Physical Autonomy of Minors Act is a neutral law. 16

2. The Physical Autonomy of Minors Act is a generally applicable law. 18

B. The Physical Autonomy of Minors Act Satisfies Strict Scrutiny Because Delmont Has a Compelling Governmental Interest in Protecting the Health and Safety of Children. 19

C. *Employment Division v. Smith* Need Not Be Overruled, and *Wisconsin v. Yoder* Need Not Be Extended. 22

1. Upholding The Physical Autonomy of Minors Act is consistent with Employment Division v. Smith. 22

2. Any bid to extend the application of Wisconsin v. Yoder is outside the scope of this litigation. 23

CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Berisha v. Lawson, 141 S. Ct. 2424 (2021) 8, 13

Braunfeld v. Brown, 366 U.S. 599 (1961) 23

Bridges v. California, 314 U.S. 252 (1941) 9

Cannon v. Peck, 36 F.4th 547 (4th Cir. 2022) 13

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) 16, 17, 18, 22

Coral Ridge Ministries Media, Inc. v. Southern Poverty Law Ctr., 142 S. Ct. 2453 (2022) 13

Curtis Publ'g Co. v. Butts, 388 U.S. 130 (1967) 7, 9

Dickerson v. United States, 530 U.S. 428 (2000) 12

Dickson v. Afiya Center, 636 S.W.3d 247 (Tex. App. Dallas 2021) 11, 12

Employment Division v. Smith, 494 U.S. 872 (1990) 15, 18, 22, 23

Franklin Prescriptions, Inc. v. New York Times, 267 F. Supp. 2d 425 (E.D. Pa. 2003) 11, 12

Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021) 15, 16, 18, 19

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) 7, 8, 9, 10, 11, 12

Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014) 12, 14

Hutchinson v. Proxmire, 443 U.S. 111 (1979) 11, 12

Jankovic v. Int'l Crisis Group, 822 F.3d 576 (D.C. Cir. 2016) 13

Kennedy v. Bremerton School District, 142 S. Ct. 2407 (2022) 16

McKee v. Cosby, 139 S. Ct. 675 (2019) 13, 14

NAACP v. Button, 371 U.S. 415 (1963) 9

New York Times v. Sullivan, 376 U.S. 254 (1964) 7, 9, 10, 14

Prince v. Massachusetts, 321 U.S. 158 (1944) 20

Ramos v. Louisiana, 140 S. Ct. 1390 (2020) 12, 14

Reader's Digest Ass'n v. Superior Court, 37 Cal. 3d 244, 255 (1984) 8

Reynolds v. United States, 98 U.S. 145 (1878) 24

Harte-Hanks Commc'ns., Inc v. Connaughton, 491 U.S. 657 (1989) 13, 14

Tah v. Glob. Witness Publ'g, Inc., 991 F.3d 231 (D.C. Cir. 2021) 13

Time, Inc. v. Firestone, 424 U.S. 448 (1976) 10, 12

United States v. Lee, 455 U.S. 252 (1982) 15, 19

Wisconsin v. Yoder, 406 U.S. 205 (1972) 19, 23, 24

Wolston v. Reader's Digest Ass'n, 433 U.S. 157 (1979) 11

World Wide Ass'n of Specialty Programs v. Pure, Inc., 450 F.3d 1132 (10th Cir. 2006) 13

STATUTES

21 C.F.R. § 600 21

21 C.F.R. § 606 21

21 C.F.R. § 607 21

21 C.F.R. § 610 21

21 C.F.R. §630 21

21 C.F.R. § 640 21

28 U.S.C. § 1254 vi

OTHER AUTHORITIES

Carol M. Kaplan, *The Devil is in the Details: Neutral, Generally Applicable Laws and Exceptions from Smith*, 75 N.Y.U. L. REV. 1045 (2000) 16

Letter to the Inhabitants of Quebec, 1 Journals of the Continental Congress 7

The Federal Drug Administration, *Blood Collection and Adverse Events in Teenage (16-18) Blood Donors*, 1 (Sept. 1, 2016), https://www.fda.gov/media/101082/download 20

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. I ..... vi, 7

OPINIONS BELOW

The opinion of the District Court for the District of Delmont, Beach Glass Division is unreported, but it is available at *Richter v. Girardeau*, C.A. No. 22-CV-7855 (D. Del. Sept. 1, 2022) and can be found in the record at 1–20. The opinion of the Court of Appeals for the Fifteenth Circuit is likewise unreported, but it is available at *Richter v. Girardeau*, 2022-1392 (15th Cir. 2022) and can be found in the record at 21–38.

JURISDICTION

The United States Circuit Court for the Fifteenth Circuit entered a final judgment on this matter on December 1, 2022. R. 38. The petition was timely filed, and this Court granted certiorari. R. 45, 46. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves questions regarding the Free Speech and Free Exercise Clauses of the First Amendment as applied to the states through the Fourteenth Amendment. The First Amendment provides that, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; abridging the freedom of speech . . . ." U.S. CONST. amend. I.

STATEMENT OF THE CASE

Respondent Constance Girardeau is the Governor of the State of Delmont and has used her platform to be an advocate for child safety. R. 39. During her gubernatorial campaign, Ms. Girardeau raised concerns about increased rates of child abuse, neglect, and suicide throughout the country. R. 2, 7, 40. Ms. Girardeau was deeply troubled by a recent U.S. Department of Health and Human Services report, which found that between 2016 and 2020 there was a 214 percent increase in child abuse and neglect, and of those abused, 16.5 were physically abused. R. 39. Since then, she has focused on combating child abuse in Delmont. R. 39. On January 4, 2021, she was informed about a piece of legislation going before the Delmont General Assembly, the Physical Autonomy of Minors Act ("the Act"), that is aimed at increasing the regulation surrounding the procurement, donation, or harvesting of the bodily organs, fluids, or tissues of minors. R. 2, 39.

On the same day, Ms. Girardeau was briefed on an article detailing the blood donation and banking requirements of the Church of the Kingdom ("Kingdom Church"). R. 3, 5, 40. After Adam Suarez, a fifteen-year-old Kingdom Church member, went into acute shock while donating the maximum amount of blood recommended by the American Red Cross, Ms. Girardeau created a task force to investigate the blood banking practices of Kingdom Church under the Act. R. 6, 8. Soon thereafter, Petitioner Emmanuella Richter, the founder of Kingdom Church, sought injunctive relief to stop the investigation. R. 8.

1. Blood Banking: A "Central Tenant" of Kingdom Church's Faith

Kingdom Church was founded in 1990 by in Pangea, a South American country, by Ms. Richter. R. 3. Ms. Richter was a comparative religion scholar and synthesized the core belief structure of Kingdom Church from her own studies of the sacred foundational texts of many

world faiths. R. 3. She, along with her husband, a wealthy Pangea tea grower, began promoting their church through door-to-door proselytization and introductory seminars. R. 3. Unfortunately, in 2000, a military coup took over the Pangea government and began targeting Kingdom Church. R. 3. Thus, Ms. Richter, along with her husband and a large portion of the church congregation left Pangea and received asylum in the United States. R. 3. The congregation settled in Beach Glass, Delmont and has since spread throughout the state. R. 4.

The members of Kingdom Church reside and work within designated compounds and all income is shared communally, most of which is derived from the commercial sale of "Kingdom Tea." R. 4. Additionally, Kingdom Church conducts seminars at each compound to promote the church's "beliefs, history, and lifestyle." R. 4. These seminars are open to the public and are conducted by a panel of church elders. R. 4. Further, Kingdom Church continues to partake in door-to-door proselytization throughout Delmont. R. 4. Ms. Richter does not engage in the sale of Kingdom Tea, speak at seminars, or partake in door-to-door proselytization. R. 4. However, Ms. Richter does oversee most of the church's operations. R. 4.

To become a member of Kingdom Church, individuals must undertake a course of "intense doctrinal study to achieve a state of enlightenment." R. 4. This intense process is open to individuals once they reach "the state of reason," fifteen-years-old. R. 4. Once confirmed, members must marry within the church, raise all children under Kingdom Church's belief system, and cannot accept or donate blood from a non-church member. R. 4–5. Instead, members are required to bank their blook at local blood banks for themselves and fellow Kingdom Church members. R. 5.

A "central tenant" of the Kingdom Church faith is blood banking. R. 5. Additionally, a core objective of the church's school curriculum is to establish a "servant's spirit." R. 5. To

encourage this the children participate in various "Service Projects," which include blood drives, gardening, grounds cleaning, collecting food and clothing for local food banks, and dropping off recyclables to recycling locations. R. 5. The blood drives occur on a regular schedule and children may not skip blood donation days unless they are ill. R. 5.

2. The Physical Autonomy of Minors Act and Delmont's Rising Concern for Blood Banking

In 2020, *The Beach Glass Gazette* published a story about Kingdom Church, including its blood banking practice. R. 5. This story "raised an outcry" within the Delmont community, because many were concerned about whether the minors' consent to being used for blood banking purposes was valid. R. 5. As a result, the Delmont General Assembly passed the Act in 2021. R. 6. The Act forbade the "procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor (an individual under the age of sixteen) regardless of profit and regardless of the minor's consent." R. 6. Before the Act, Delmont law "prohibited minors under the age of sixteen from consenting to blood, organ, or tissue donations except for autologous donations in the case of medical emergencies for consanguineous relatives." R. 5. Ms. Girardeau did not become aware of the 2020 article or the Act until January 4, 2021. R. 39. However, once she was notified, she began to advocate for the Act's passage based on her commitment to child safety and welfare. R. 6.

3. Adam Suarez's Hospitalization and the Resulting Investigation

On January 17, 2022, fifteen-year-old Adam Suarez, who was recently confirmed to Kingdom Church, went into acute shock after donating the maximum amount of blood recommended by the American Red Cross. R. 6. Henry Romero, a Kingdom Church member, was involved in a massive, multi-car crash, along with other Kingdom Church members. R. 6. The members were in a Kingdom Tea van used by the compound to make store deliveries. R. 6.

As a result of the crash, dozens of people died, including ten Kingdom Church members. R. 6. Mr. Romero was admitted to the Beach Glass Hospital in critical condition. R. 6. It was then determined Mr. Romero would need a blood donation to undergo a necessary operation. R. 6.

Because of his Kingdom Church membership, Mr. Romero was required to receive blood from another church member. R. 4, 6. A call went out to Kingdom Church compounds to identify a blood type match for Mr. Romero. R. 6. Adam, Mr. Romero's cousin, was identified as a blood type match and was brought to the hospital by his parents to begin donating blood. R. 6. While giving blood, Adam went into acute shock after his blood pressure became dangerously elevated. R. 6. Adam was then admitted to the hospital's intensive care unit. R. 6. While Adam has since recovered, doctors have warned him not to give blood in the immediate future. R. 7.

Adam's blood donation was not permissible under the Act. R. 6. Thus, Ms. Girardeau commissioned a task force of governmental social workers to investigate Kingdom Church's blood banking requirements for children. R. 7. Kingdom Church once again became a matter of public debate, resulting in heightened media attention. R. 7. Some of this media attention fell on Ms. Girardeau and she was frequently questioned about Adam and Kingdom Church, including at a fundraiser for Delmont University on January 22. R. 7. Ms. Girardeau expressed concern for the children of Kingdom Church and potential violations of the Act. R. 7.

Ms. Richter sought injunctive relief from the Beach Glass Division of the Delmont Superior Court to stop the state's investigation. R. 7. Ms. Richter argued that the investigation violated the Free Exercise Clause of the First Amendment. R. 8. As a result, at a large press event following a campaign rally, Ms. Girardeau was questioned about Ms. Richter's attempt to seek injunctive relief. R. 8. During the questioning, reporters also made comparisons between the task force's actions and the Pangea military dictatorship. R. 8. Ms. Girardeau responded: "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. 8. Ms. Richter reacted to this statement by amending her complaint against Ms. Girardeau to include an action for defamation on January 28, 2022. R. 8.

4. District Court Proceeding

Ms. Richter challenged the investigation and resulting defamatory statement under two First Amendment claims. R. 8. First, she argued that the statements made by Ms. Girardeau were defamatory. R. 8. Second, she argued that the investigation and the Act violated her First Amendment right to the free exercise of religion. R. 8.

Ms. Girardeau moved for summary judgment under Rule 56(a) of the Federal Rules of Civil Procedure, arguing that there was no dispute of material fact or law that the investigation is constitutional, and that the defamatory statements failed to fulfill the requirements of the actual malice standard applicable to limited-purpose public figures. R. 8–9. The District Court agreed and granted summary judgment on both claims. R. 20.

5. Fifteenth Circuit Proceeding

Ms. Richter appealed the District Court's decision, arguing it erred in finding that there was no genuine issue of material fact regarding her status as a limited-purpose public figure under defamation law. R. 21. Additionally, Ms. Richter argued the District Court's finding that the Act was neutral and generally applicable was incorrect as a matter of law. R. 21. The Fifteenth Circuit affirmed the dismissal for both claims. R. 21. 38. On the first claim, it affirmed the District Court's holding that Ms. Richter was a limited-purpose public figure but questioned whether the actual malice standard under *New York Times v. Sullivan* was the appropriate standard. R. 33. On the second claim the Fifteenth Circuit again affirmed the District Court's

finding that the Act was a neutral, generally applicable law. R. 34. Ms. Richter filed a petition for a writ of certiorari, which this Court granted R. 45–46.

SUMMARY OF THE ARGUMENT

This Court should affirm the Fifteenth Circuit's final judgment that Ms. Richter is a limited-purpose public figure, and the Physical Autonomy of Minors Act is a neutral and generally applicable law. First, the actual malice standard is both constitutional and appropriate for limited-purpose public figures in defamation claims. The actual malice standard is supported by core First Amendment principles, including the acceptance of some false statements to preserve robust public debate. Limited-purpose public figures also closely resemble public figures because they actively join public debate, and thus assume the risk of being defamed. Further, limiting the application of the actual malice standard under these facts would only chill public debate on important issues such as child safety. Therefore, the application of the actual malice standard to limited-purpose public figures is constitutional.

In addition, the Act is a neutral, generally applicable law consistent with *Employment Division v. Smith* under the Free Exercise Clause of the First Amendment. The Act is neutral because the statutory text does not implicate or target religion. Furthermore, it was not designed by the legislature to have a discriminatory purpose and is not discriminatory in its actual operation or effect. It is generally applicable because it applies indiscriminately to all minors, regardless of religion or group, with no exemptions. The Act aims to protect a narrow class of vulnerable individuals in Delmont society, and any burden on the free exercise of Ms. Richter and Kingdom Church is merely incidental. Even if this Court finds that the Act is not neutral and generally applicable, it satisfies strict scrutiny. The Act was promulgated to further the compelling governmental interest of protecting the health, safety, and welfare of all Delmont

minors and is the least restrictive means of achieving that interest. Finally, the precedent of *Smith* is consistent with a finding that the Act is constitutional under the First Amendment.

ARGUMENT

I. THE APPLICATION OF THE ACTUAL MALICE STANDARD TO LIMITED-PURPOSE PUBLIC FIGURES IS A CORNERSTONE PRECEDENT THAT SHOULD NOT BE QUESTIONED.

The application of the actual malice standard to limited-purpose public figures is constitutional. The First Amendment proclaims: "Congress shall make no law … abridging the freedom of speech." U.S. Const., amend. I. The Founders understood the First Amendment to promote important aspects of American life such as "truth, science, morality, and arts in general;" *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 147 (1967) (quoting Letter to the Inhabitants of Quebec, 1 Journals of the Continental Congress 108); as well as "uninhibited, robust, and wide-open" public debate. *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). For much of American history, common law governed defamation and libel. *See id.* at 283. However, in 1964, this Court recognized that providing open debate on public issues may often "include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 270. Thus, this Court created the actual malice standard for public officials. *Id*. at 280. This heightened standard requires public officials to prove that the defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id*.

For nearly sixty years, this Court has continued to reaffirm and expand the holding of *Sullivan*. *See Butts*, 388 U.S. at 147; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974). One of these extensions is the application of the actual malice standard to limited-purpose public figures, or those who "thrust themselves to the forefront of particular controversies." *Gertz*, 418 U.S. at 345. Since *Gertz*, the application of the actual malice standard to limited-purpose public

figures has gone unquestioned and is often applied to religious figures including church members and founders. *See Berisha v. Lawson*, 141 S. Ct. 2424, 2424 (2021) (denying cert to a petitioner that asked this Court to overturn the extension of *Sullivan* to limited-purpose public figures); *Reader's Digest Ass'n v. Superior Court*, 37 Cal. 3d 244, 255 (1984), *cert. denied*, 478 U.S. 1009 (1986).

The actual malice standard, as applied to limited-purpose public figures, is a workable and constitutional standard that should not be disturbed. First, the actual malice standard is rooted within the original meaning of the First Amendment. Second, limited-purpose public figures actively step to the forefront of public debate and thus closely resemble public figures. Finally, this case is not the proper vehicle to limit the application of *Sullivan*, and doing so today would only result in a precedent that chills speech. Therefore, this Court should affirm the Fifteenth Circuit's application of the actual malice standard to Ms. Richter and reaffirm that actual malice is the appropriate standard for limited-purpose public figures.

A. Holding Limited-Purpose Public Figures to the Actual Malice Standard is Consistent with the Original Meaning of the First Amendment.

The original meaning of the First Amendment supports extending *Sullivan* to limited-purpose public figures. The core principle of the First Amendment is to guarantee that debate on public issues is "uninhibited, robust, and wide-open." *Sullivan*, 376 U.S. at 270. Additionally, the governmental interest supporting libel laws is "the compensation of individuals for the harm inflicted on them by defamatory falsehood." *Gertz*, 418 U.S. at 341. Applying the actual malice standard to limited-purpose public figures balances both of these principles because it requires those who have joined public debate to meet a higher standard to recover for defamatory statements. Thus, this Court should find that limited-purpose public figures must prove actual malice to recover for defamatory statements.

The actual malice standard was created to support First Amendment principles. *Sullivan*, 376 U.S. at 279–80. In *Sullivan*, this Court relied on the Founder's understanding that public debate includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id*. at 270. Specifically, this Court noted that erroneous or false statements are "inevitable" in a country that supports free debate, and those statements must be allowed, in reason, to give the First Amendment "breathing space." *Id*. at 272 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963); *see also id*. at 269 ("It is a prized American privilege to speak one's mind, although not always with perfect good taste." (quoting *Bridges v. California*, 314 U.S. 252, 270 (1941))). Under this framework, this Court found that the "constitutional guarantees [of the First Amendment] require" prohibiting public officials from recovering damages for defamatory statements unless the statement was made with actual malice. *Id*. at 279–80.

The actual malice standard was extended to all public figures and limited-purpose public figures under similar core First Amendment principles. *Butts*, 388 U.S. at 147, 154 (holding that the actual malice standard applies to public figures because the First Amendment is "not the preserve of political expression or comment upon political affairs," but applies to "all issues"); *Gertz*, 418 U.S. at 347. In *Gertz*, this Court reiterated that society has a strong interest in promoting open debate on public issues, but "punishment of error runs the risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press." 341 U.S. at 340. This risk must be balanced with the underlying state interest of "compensation of individuals for the harm inflicted upon them by defamatory falsehood." *Id*. at 341. To strike the appropriate balance, this Court found that states only retain authority to enforce legal remedies for private individuals. *Id*. at 347–48.

The actual malice standard is consistent with the original meaning of the First Amendment. The Founders understood the First Amendment to create "breathing space" for free and open public debate. *Sullivan*, 376 U.S. at 272. The actual malice standard supports this principle because it allows individuals to speak freely about public figures and issues without fearing being haled to court for defamation. *See id*. at 279–80. Similarly, the actual malice standard, as extended to limited-purpose public figures, serves the same principles. Specifically, limited-purpose public figures are involved in public debate. *See Gertz* 341 U.S. at 340. Thus, states do not have a strong interest in providing compensation for defamatory statements made toward limited-purpose public figures. *See id*. at 347–48. Therefore, this Court should find that the application of the actual malice standard to limited-purpose public figures is constitutional.

B. Limited-Purpose Public Figures are Easily Distinguishable from Private Individuals.

The Fifteenth Circuit was incorrect to express concern that limited-purpose public figures are too similar to private individuals to subject them to a higher standard. A limited-purpose public figure is someone who "voluntarily thrust[s]" or "inject[s]" themselves into public controversy, giving them greater access to channels of communication. *Gertz*, 418 U.S. at 351. Conversely, a private individual is more vulnerable to injury because they do not have unlimited access to effective communication channels and less opportunity to correct false statements. *Id.* at 344. Thus, limited-purpose public figures are more similar to public figures and should be held to the actual malice standard.

An individual becomes a limited-purpose public figure when he "voluntarily injects himself or is drawn into a particular public controversy." *Id.* at 351; *see also Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) (holding a wife, during divorce proceedings with her wealthy husband, did not become a public figure); *Hutchinson v. Proxmire*, 443 U.S. 111, 135–

36 (1979) (holding a government employee was not a public figure because his notoriety derived from the award he was suing over). Additionally, a limited-purpose public figure is only subject to the actual malice standard for a "limited range of issues," which are identified "by looking to the nature and extent of an individual's participation in the particular controversy giving rise to defamation." *Id*. at 352. Further, limited-purpose public figures "have assumed roles of especial prominence in the affairs of society" and "must accept certain necessary consequences." *Id.* at 344–45; *see also Wolston v. Reader's Digest Ass'n*, 433 U.S. 157, 164 (1979) (reasoning that limited-purpose public figures can "influence the resolution" of "a matter that attracts public attention"). Therefore, limited-purpose public figures are less deserving of recovery because they enjoy "significantly greater access to channels of effective communication and hence have more realistic opportunity to counteract false statements," and are less "vulnerable to injury." *Gertz*, 418 U.S. at 344.

On the other hand, a private individual "has relinquished no part in his interest in the protection of his own good name." *Gertz*, 418 U.S. at 345. This is largely because private individuals have neither thrust themselves into controversy nor do they have greater access to media to counter defamatory material. *See id*. at 344. This is true even in the age of technology and social media. *See Franklin Prescriptions, Inc. v. New York Times*, 267 F. Supp. 2d 425, 429 (E.D. Pa. 2003) (finding that the plaintiff was a private individual despite his online presence); *Dickson v. Afiya Center*, 636 S.W.3d 247, 261 (Tex. App. Dallas 2021) (holding abortion rights organizations were not limited-purpose public figures despite having made popular posts on social media). Thus, the state should protect private individuals from "public scrutiny," and thus private individuals have "a more compelling call on the courts to redress of injury influenced by defamatory falsehood." *Gertz*, 418 U.S. at 344, 345.

Limited-purpose public figures thrust themselves into the public eye and should be held to a higher standard. Limited-purpose public figures take active steps to be involved in public controversy. *Gertz*, 418 U.S. at 351. They are not passive. *See Time*, 424 U.S. at 454; *Hutchinson*, 443 U.S. at 135–36. Thus, like public figures, they knowingly assume the risk that defamatory statements may be made about them. *Gertz*, 418 U.S. at 344–45. This is not true for private individuals. *Id*. at 345. The Fifteenth Circuit noted that today we are faced with "a plethora of individuals who are somewhat in the public eye, or somewhat in public controversy." R. 32. However, these individuals who are "somewhat in the public eye" would only be held to the actual malice standard if the defamatory statement was made concerning the public issue that they injected themselves into. *See Gertz*, 418 U.S. at 352. Further, courts recently have not difficulty distinguishing between private individuals and limited-purpose public figures, as the Fifteenth Circuit alludes to, even in the modern age of technology. *See Franklin Prescriptions*, 267 F. Supp. 2d at 429; *Dickson*, 636 S.W.3d at 261. Therefore, limited-purpose public figures must be held to a higher standard.

C. This is Not the Case to Overturn a Concrete Precedent Like Actual Malice.

The facts of this case do not support limiting *Sullivan*'s holding. The doctrine of *stare decisis* enshrines into law that a "'special justification' not just an argument that the precedent was wrongly decided" is needed before this Court decides to overturn precedent. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014) (quoting *Dickerson v. United States*, 530 U.S. 428, 443 (2000)). Additionally, this Court has recently recognized that "no case has before suggested that a single Justice may overrule precedent." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1403 (2020). There is no special justification that supports limiting *Sullivan*, and even if there

was, this case would create an unworkable precedent. Therefore, this Court should reaffirm the application of the actual malice standard to limited-purpose public figures.

Since *Sullivan*, this Court has reaffirmed the use of actual malice ten times. *See, e.g.*, *Harte-Hanks Commc'ns., Inc v. Connaughton*, 491 U.S. 657, 666 (1989) (noting "there is no question" that the appropriate standard is actual malice). Further, this Court has recently reaffirmed this extension of *Sullivan* by denying certiorari for cases addressing the actual malice standard and its application to limited-purpose public figures. *See Berisha*, 141 S. Ct. at 2424 (2021); *Coral Ridge Ministries Media, Inc. v. Southern Poverty Law Ctr.*, 142 S. Ct. 2453, 2453 (2022) (petitioner asked this Court to limit *Sullivan* to public officials).

The circuits have consistently applied the actual malice standard. *See, e.g., Cannon v. Peck*, 36 F.4th 547, 566 (4th Cir. 2022) (explaining that the "overriding constitutional requirement" for defamation claims has always been the actual malice standard). Lower courts often rely on the generosity and breadth of *Sullivan* when applying actual malice to limited-purpose public figures. *See, e.g., Jankovic v. Int'l Crisis Group*, 822 F.3d 576, 585 (D.C. Cir. 2016) ("The Court has laid broad rules about when a private individual becomes a public figure."). Lower courts, however, also note that this breadth is acceptable because the actual malice standard only applies in a limited set of circumstances and only to those who are public figures for a limited range of issues. *World Wide Ass'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1136 (10th Cir. 2006). This consistent application is met with little dissent, much of which comes from Justice Thomas. *See McKee v. Cosby*, 139 S. Ct. 675, 676 (2019) (Thomas, J., concurring); *Berisha*, 141 S. Ct. at 2424–25 (Thomas, J., dissenting); *Coral Ridge*, 142 S. Ct. at 2454–55 (Thomas, J., dissenting); *Tah v. Glob. Witness Publ'g, Inc.*, 991 F.3d 231, 245 (D.C. Cir. 2021) (Silberman, J., dissenting). While Justice Thomas believes the actual malice standard

undercuts principles of the First Amendment and libel, he also recognized that this Court should wait for "an appropriate case" to review *Sullivan*. *McKee*, 139 S. Ct. at 676, 678.

This is not the case to question the actual malice standard. At its core, the actual malice standard recognizes that debate on public issues is quintessential to the American experience. *See Sullivan*, 376 U.S. at 269. Ms. Richter is the face of a church that has been under much public scrutiny. R. 24. So much so, that the Delmont General Assembly was prompted to pass a law to protect the bodily autonomy of minors. R. 25. Ms. Richter, aggravated her church was being questioned by the state, added her defamation claim as a mere afterthought to retaliate on the state's investigation. R. 27. If this Court were to overturn the application of the actual malice standard to limited-purpose public figures like Ms. Richter, speech would be chilled. Delmont citizens would fear being dragged to court for questioning Kingdom Church's blood donation and banking. This not only would hinder the community's First Amendment rights but also prevent all individuals from bringing to light important issues like child safety.

Additionally, there is no "special justification" for overturning *Sullivan*. *See Halliburton*, 573 U.S. at 266. The actual malice standard is a concrete precedent that has been applied consistently for nearly sixty years. *See, e.g.*, *Harte-Hanks*, 491 U.S. at 666. To overturn a precedent this strong merely because one Justice claims it was a "policy-driven" decision is unwarranted. *See McKee*, 139 S. Ct at 676; *Ramos*, 140 S. Ct. at 1403.

In conclusion, the application of the actual malice standard to limited-purpose public figures is a concrete and constitutional precedent because it promotes First Amendment principles and applies to those who thrust themselves into public debate. Therefore, this Court should affirm the Fifteenth Circuit's holding.

II. THE PHYSICAL AUTONOMY OF MINORS ACT IS A NEUTRAL, GENERALLY APPLICABLE LAW AND IS CONSISTENT WITH THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

The Act is both neutral and generally applicable, and thus is consistent with the Free Exercise Clause of the First Amendment. The Free Exercise Clause protects "the right to believe and profess whatever religious doctrine one desires." *Employment Division v. Smith*, 494 U.S. 872, 877 (1990). Although this Court has consistently held that "[r]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection," *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021), the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law prohibits conduct that his religious beliefs prescribe. *Smith*, 494 U.S. at 879 (1990) (quoting *United States v. Lee*, 455 U.S. 252, 263 n. 3 (1982) (Stevens, J., concurring)).

The Fifteenth Circuit correctly held that the Physical Autonomy of Minors Act is a neutral, generally applicable law. Any burden on the Kingdom Church's blood donation and banking practices is merely incidental to the secular regulation of medical procedures on minors. Moreover, the Act survives strict scrutiny because Delmont has a compelling governmental interest in protecting the health, safety, and welfare of children. Lastly, the application of *Employment Division v. Smith* is proper and necessitates the conclusion that the Act is valid. This Court need not overturn or expand longstanding judicial precedent in this case.

A. The Physical Autonomy of Minors Act is a Neutral and Generally Applicable Law Because It Uses Clinical Language and Uniformly Applies to All Minors.

The Act is both neutral and generally applicable. A neutral, generally applicable law need not be justified by a compelling government interest, even if the law may have the incidental effect of burdening a particular religious practice. *See, e.g.*, *Smith*, 494 U.S. at 872. Additionally,

this Court recently affirmed that the petitioner is responsible for proving a governmental entity had burdened a sincere religious practice pursuant to a law or policy that is not neutral or generally applicable. *See Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2422 (2022). Ms. Richter fails to meet this burden. The Act is a neutral, generally applicable law, and any burden on the free exercise of Kingdom Church is merely incidental.

1. *The Physical Autonomy of Minors Act is a neutral law.*

The Act is neutral because it aims to protect the health, safety, and welfare of all children, not to infringe upon or restrict any religiously motivated practice. A "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 141 S. Ct. at 1876. When assessing whether a law is neutral, the inquiry considers if (1) the text of the law facially targets religion, (2) the law is discriminatory in object or purpose, and (3) the law is discriminatory in its actual operation or effect. *See* Carol M. Kaplan, *The Devil is in the Details: Neutral, Generally Applicable Laws and Exceptions from Smith*, 75 N.Y.U. L. REV. 1045, 1077 (2000).

"A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993). The plain language of the Act forbids the "procurement, donation, or harvesting of the bodily organs, fluids, or tissue of a minor regardless of profit or the minor's consent." R. 2. The Act does not implicate religious animus and instead uses words that resonate as clinical. *See* R. 2. Far from the words "sacrifice" and "ritual" incorporated into the *Lukumi* ordinances, the Act contains no language with strong religious connotations. 508 U.S. at 533–34. The words "procurement," "donation," and "harvesting" have no exclusive spiritual meaning or

affiliation and were carefully selected by the Delmont General Assembly for indiscriminate application. *See* R. 2. Thus, on its face, the Act does not target religion.

Courts often look to the historical background, events leading up to a law's adoption, and the legislative record to determine whether a law is discriminatory in object or purpose. *Lukumi*, 508 U.S. at 540. Any assertion that the Act was designed to suppress the religious beliefs of Kingdom Church is mere speculation and conjecture. Nothing in the record indicates prejudice by the "decision-making body." *See id.* In fact, there were no contemporaneous statements by the Delmont General Assembly indicating Kingdom Church was the impetus for adopting the Act. Instead, the only evidence cited was the public "outcry" over the ethics of Kingdom Church's blood donation and banking practices following an article published in *The Beach Glass Gazette*. R. 4–5. But even concern amongst the public does not support the conclusion that the Act is discriminatory because Ms. Girardeau was informed of the Act and the article detailing Kingdom Church's blood banking practices on the same day. R. 39. Ms. Girardeau further confirmed that events relating to "Kingdom Church, the Kingdom Tea van crash, [and] Adam Suarez's blood donation" had nothing to do with her support of the Act. R. 40. Ms. Girardeau's statements of support for the Act were in furtherance of her gubernatorial re-election campaign platform regarding the ballooning crisis over the mental, emotional, and physical well-being of Delmont children. R. 7. The Act is not discriminatory to Kingdom Church in its object or purpose.

Finally, the Act does not discriminate in actual operation or effect because it regulates medical procedures available to minors. It contains no exemptions to exclude secular conduct in its scope, unlike the slaughterhouses in *Lukumi*. *See id.* at 538. Additionally, unlike in *Sherbert v. Verner*, the Act contains no "good cause" provision that incorporates a system of individual exemptions at the sole discretion of a government administrator. *See* 374 U.S. 398, 406 (1963).

The Act functions as an absolute prohibition. *See* R. 2. The Delmont General Assembly determined that all minors are regulated by the Act, regardless of any religious belief, and it sweeps both secular and religious practices under its authority.

The Act is far from a religious "gerrymander." *Lukumi*, 508 U.S. at 536. It was not adopted to prohibit the blood banking and donation practices of Kingdom Church's fifteen-year-old members but to safeguard the bodily autonomy of minors in a wide array of circumstances. Therefore, the Act is neutral.

2. *The Physical Autonomy of Minors Act is a generally applicable law.*

The Act similarly satisfies the general applicability inquiry because it applies indiscriminately to all minors regardless of religion or group. A law may fail to be generally applicable if it "consider[s] the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions,'" or if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests." *Fulton*, 141 S. Ct. at 1877 (quoting *Smith*, 494 U.S. at 884).

The Act does not ban a practice exclusively carried out by Kingdom Church. This is similar to the holding established in *Smith*, which found that a law is generally applicable even if it incidentally burdens one group. 494 U.S. at 892. Here, the Act targets the blood donation of all minors, not just those of Kingdom Church. *See* R. 6. Any burden the Act places on Kingdom Church by not allowing its fifteen-year-old members to donate or bank blood is merely incidental. In fact, under the Act, confirmed members would be allowed to donate blood once they turned sixteen, thus affecting a very small number of Kingdom Church members. *See* R. 6.

Furthermore, though blood drives for the children's educational enrichment occur on a set schedule, blood donation and banking are merely one of many extracurriculars incorporated

into the homeschool curriculum. R. 4–5. The religion focuses on creating an intertwined community, which encourages the children to engage in "Service Projects" such as organic gardening, grounds cleaning, collecting and donating to food and clothing centers, and dropping off recyclables to recycling stations. R. 4–5. This list of Service Projects illustrates that the fifteen-year-olds that have reached membership status in Kingdom Church but have not yet reached the permissible age to donate and bank blood may still strive toward establishing a "servant's spirit," bettering the community, and growing spiritually with ample safe alternative projects. R. 5. Kingdom Church members over sixteen remain free to pursue blood donation and banking activities. The Act aims to protect a narrow class of vulnerable individuals—children. Therefore, the Act is generally applicable.

B. The Physical Autonomy of Minors Act Satisfies Strict Scrutiny Because Delmont Has a Compelling Governmental Interest in Protecting the Health and Safety of Children.

Not only is the Act a neutral, generally applicable law, but it meets the strict scrutiny standard because Delmont has a compelling governmental interest in protecting the health, safety, and welfare of children. To satisfy strict scrutiny, a law must be the least restrictive means of achieving some compelling governmental interest. *See Lee*, 455 U.S. at 257–58; *Fulton*, 141 S. Ct. at 1881. Protecting the health, safety, and welfare of children is a serious issue and the Act provides the protection the Delmont General Assembly determined to be necessary.

The activities of all individuals, even if religiously motivated, are subject to state regulation rooted in the inherent police power to promote the health, safety, and general welfare of all residents. *See, e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 219–20 (1972). Generally, state legislatures enjoy broad judicial deference when promulgating laws and regulations within the bounds of the state's inherent police power. *See Prince v. Massachusetts*, 321 U.S. 158, 167

(1944) ("The state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.").

Blood banking and donation practices for minors under sixteen-years-old fall within the ambit of the state's inherent police power to promote the health, safety, and general welfare of children. Though generally safe, it is not a risk-free medical procedure for minors. The Federal Drug Administration, *Blood Collection and Adverse Events in Teenage (16-18) Blood Donors,* 1, 1 (Sept. 1, 2016), https://www.fda.gov/media/101082/download. The Federal Drug Administration has not established a minimum age limit on blood donations. *Id.* Still, most states and the American Red Cross have come to a consistent conclusion derived from expert analysis: blood donations from those under the age of sixteen can threaten the health of minors. *Id.* Teenage blood donors suffer from higher rates of various complications and injuries per donation, ranging from mild to severe. *Id*. at 5. These include allergic reactions, pain and swelling, localized infections, blood vessel injury, vasovagal reactions, iron deficiencies, major cardiovascular events, and even transient ischemic attack death within twenty-four hours of donation. *Id.*

A 2008 study evaluated adverse reactions in sixteen- and seventeen-year-olds compared to eighteen- and nineteen-year-olds. *Id.* at 6. Sixteen- and seventeen-year-olds experienced reactions at rates significantly greater than eighteen- and nineteen-year-old donors. *Id.* Another 2008 study demonstrated that young age has the strongest association with an adverse reaction, followed by first-time donation status and female gender. *Id.* Young donors have the highest rate of complications and account for half of all injuries associated with blood donations even though they make up less than ten percent of total donations. *Id.* at 7. Moreover, because donating blood

is a medical procedure, it is regulated at the federal and state level. Blood banking is similarly subject to government oversight to ensure that the blood, a biohazard, is stored in a manner consistent with preserving its viability and purity. *See generally*, 21 C.F.R. §§ 600, 606, 607, 610, 630, 640 (2023).

These facts and statistics became a reality for young Adam Suarez. Following a car accident involving members of Kingdom Church, Adam was determined to be a blood match for his cousin, Mr. Romero, who had been injured in the wreck. R. 25. Adam's parents accompanied him to the hospital where Adam donated the maximum amount of blood recommended by the American Red Cross for the first time in his life. R. 6. He was only fifteen years old. R. 25. In the middle of the process, Adam went into acute shock after his blood pressure rose dangerously high, resulting in Adam being admitted to the hospital's intensive care unit. R. 6. After this close call, doctors advised Adam to not donate blood in the immediate future. R. 6.

The record further reveals a critical concern for lawmakers in Delmont regarding child health, safety, and welfare. R. 5, 7, 23. The U.S. Department of Health and Human Services report indicated a spike "from a 59.8 percent decrease to a 214 percent increase" in child abuse and neglect, with 16.5 percent of children suffering from physical abuse. R. 39. This data was instrumental in garnering political support for the Act. R. 39. Ms. Girardeau also funded independent research on teenage suicide and found that "'[t]rauma, including suspected or confirmed cases of abuse, neglect, and domestic violence, was seen in more than a quarter (27.1%) of children who died by suicide.'" R. 40. The scientific evidence and statements in the record illustrate that Delmont has a valid, compelling governmental interest in promulgating the Act. Thus, even if the neutrality or general applicability of the Act were in question, the law

advances the compelling governmental interest of Delmont in protecting the health, safety, and welfare of children and is the least restrictive means for achieving that interest.

C. *Employment Division v. Smith* Need Not Be Overruled, and *Wisconsin v. Yoder* Need Not Be Extended.

Smith and *Yoder* are indispensable precedents in free exercise jurisprudence. This Court need not make sweeping determinations about *Smith* or *Yoder* to resolve the instant case.

1. *Upholding The Physical Autonomy of Minors Act is consistent with* Employment Division v. Smith.

This Court may uphold both *Smith* and the Act without running afoul of the First Amendment. It cannot be ignored that *Smith* has faced scrutiny since it was decided. In *Smith*, an Oregon statute criminalized the possession of peyote, a hallucinogenic drug derived from certain cactus plants. 494 U.S. at 874. Members of the Native American Church challenged the statute's constitutionality as applied to their religious use of peyote within the church's religious ceremonies. *Id*. The law was upheld because it was not designed to suppress the church's religious practices and was neutral and generally applicable. *Id.* at 890. The Free Exercise Clause was not implicated since the law being challenged was not specifically directed at the religious practices of the Native American Church. *Id.* at 878. The church's religious practices just happened to fall within the general proscription of the law. Free exercise protection for religiously motivated conduct is limited to circumstances such as those in *Lukumi*, where a law explicitly targets the suppression of a religious practice. 508 U.S. at 534.

There is no need to invalidate *Smith* because the instant case lends itself to a direct application of the precedent. The religious practices of Kingdom Church in requiring blood donations from minors happen to fall within the general proscription of the Act. The Act itself is not directed at blood donation practices and would apply to many circumstances involving

minors' medical treatment. R. 2. Contrary to the dicta of the Fifteenth Circuit, *Smith* is neither "inapplicable" nor an "unworkable outlier." R. 36. Its tiered scrutiny preserves the separation of church and state and strikes a balance between religious liberty and competing state interests. "'[W]e are a cosmopolitan nation made up of people of almost every conceivable religious preference,' and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming presumptively invalid, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order." *Smith*, 494 U.S. at 888 (quoting *Braunfeld v. Brown*, 366 U.S. 599, 606 (1961)). Therefore, this Court should uphold *Smith* in accordance with *stare decisis*.

2. *Any bid to extend the application of* Wisconsin v. Yoder *is outside the scope of this litigation.*

Ms. Richter argues that this Court should extend the application of *Yoder* to the instant case because it is a "hybrid situation" where free exercise is implicated "in conjunction with other constitutional protections," namely, the right of parents to direct a child's upbringing. *Smith*, 494 U.S. at 188–89; *see Yoder*, 406 U.S. at 214. In *Yoder*, Amish parents challenged a state compulsory education law. 406. U.S. at 218–19. They claimed that requiring formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of their religious beliefs. *Id*. This Court agreed and found that considering the "unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating [the Amish's] entire mode of life support that claim." *Id.* But the interest parents have in child-rearing is not without outer bounds. *See id*. at 234–35. This Court warned that "the power of the parent, even when linked to a free exercise claim, may be subject to limitation … if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant

social burdens." *Id*. Similarly here, allowing Ms. Richter and Kingdom Church's parents to subject their children to blood donation and banking practices that endanger their health is the type of parental decision that "jeopardizes the health and safety of the child" and has the "potential for significant social burdens." *Id.*

This Court has sparingly applied the narrow *Yoder* exception and should not extend it here. Erecting a categorical bar to state promulgation of neutral, generally applicable laws enhancing vulnerable children's health, safety, and welfare would create widespread policy and judicial implications. "To permit this 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, 166–67 (1878). Accordingly, this Court should not extend the application of *Yoder* to the context of parental control over a child's bodily autonomy and retainment of bodily organs, fluids, and tissues. Thus, the Fifteenth Circuit's conclusion that *Yoder* should not be applied unless education is involved should be affirmed. *See* R. 38. For the foregoing reasons, this Court should affirm the holdings of the Fifteenth Circuit.

CONCLUSION

This Court should affirm the holding of the Fifteenth Circuit. First, the extension of *New York Times v. Sullivan* to limited-purpose public figures is constitutional because it furthers the purpose of the First Amendment, applies to those who thrust themselves into the public eye, and is applied consistently. Second, the Physical Autonomy of Minors Act is constitutional because it is a neutral, generally applicable law regulating secular activities and any burden on Kingdom Church is merely incidental. Thus, *Employment Division v. Smith* need not be overturned. Therefore, we respectfully request this Court affirm the Fifteenth Circuit's decision.

Respectfully submitted,

Dated: January 31, 2023

Team No. 14

CERTIFICATE OF SERVICE

Team 14 hereby certifies that on January 31, 2023, the foregoing document was filed with the Clerk of Court for the United States Supreme Court, and that the foregoing document is the work product of the Team 14 members. Team 14 also certifies that it complied fully with the honor code of Team 14's school and the Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition Rules.

January 31, 2023

/s/Team No. 14
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