No. 22-CV-7855

In the

Supreme Court of the United States

EMMANUELLA RICHTER, *Petitioner,*

v.

CONSTANCE GIRARDEAU, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TEAM 16
Counsel for Respondent

QUESTIONS PRESENTED

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

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

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STATEMENT OF JURISDICTION

The Fifteenth Circuit Court of Appeals entered judgment on this case. Petitioners filed for a Writ of Certiorari, and this Court granted the petition. This Court has jurisdiction under 28 U.S.C. § 1254 (2019).

STATUTORY AND CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. I.

DELMONT REV. STAT. § 9-1.120.

SUMMARY OF THE ARGUMENT

The actual malice standard established in *New York Times, Co. v. Sullivan* should continue to apply to limited-purpose public figures. In essence, this burden maintains the balance between the public's need for an uninhibited press and the individual's right to obtain a remedy for damage to their reputation. Tampering with this balance would result in serious negative outcomes for the freedoms guaranteed by the First Amendment. Thus, the actual malice standard needs to stay in place for two main reasons.

First, limited-purpose public figures are better equipped to defend themselves against defamatory acts without the intervention of the legal system. Due to their increased access to broad channels of communication, public figures enjoy an increased level of power in defamation claims. Therefore, to keep the playing field level for private individuals, limited-purposes public figures must overcome the higher actual malice burden.

Second, limited-purpose public figures assume the risk of bad publicity when they insert themselves into controversy. That reality is a natural result of conscious, willful choices. Thus, rewarding limited-purpose public figures with a lower standard of proof seems unfair, especially

to those who choose to remain private. All told, the circumstances surrounding limited-purpose public figures calls for a continued application of the actual malice standard in defamation cases.

The Physical Autonomy of Minors Act (PAMA) does not violate the Free Exercise Clause. The Fifteenth Circuit correctly granted summary judgment. PAMA comports with the free exercise clause because it is neutral and generally applicable; therefore, no genuine issue of material fact exists. While it is true that the Constitution states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." The Free Exercise Clause does not relieve an individual of the obligation to comply with valid or neutral law of general applicability because the law proscribes conduct contrary to religious practice. (Smith) If a law is generally applicable and religion-neutral, it cannot be evaluated under the

The state of Delmont is entrusted with the responsibility to promote the health, safety, and general welfare of the children who reside in its state. To carry out their duty, the State and elected officials must enact laws that protect the public and conduct investigations to ensure compliance with those laws. Accordingly, the governor, in her capacity as the guardian of the state, commissioned a task force of social workers to investigate the safety and welfare of the children of Delmont. Accordingly, this Court should affirm the Fifteenth Circuit's holding that PAMA did not violate the Free Exercise Clause and hold the law is constitutional because it is neutral and generally applicable. Additionally, this Court should affirm the ruling in *Smith*.

STATEMENT OF THE CASE

I. Statement of Facts

Over three decades ago, Emmanuella Richter started the Kingdom Church in the country of Pangea. Joint Appendix ("J.A.") at 21. After years of study, she claims that her faith represents the archetypal religious experience. *Id.* at 22. Since their native country repressed their

religious beliefs, Richter, her husband Victor, and many of their followers fled to the United States. *Id.* After settling in Beach Glass, Delmont, Richter formed compounds in which her followers live to this day. *Id.* The majority of members work in the compounds, share their income communally, and perform various charitable acts around the state of Delmont. *Id.* at 22–23.

To become a confirmed member, individuals must engage in intense doctrinal study, go through a private confirmation ceremony, and be at least fifteen years of age. *Id.* at 23. Generally speaking, the Kingdom Church maintains a positive reputation across the state. *Id.* In order to grow its congregation, the church holds public seminars and organizes door-to-door proselytization efforts. *Id.* at 22. The members publicize the church's beliefs, history, and lifestyle during these recruitment activities. *Id.* One of the beliefs deduced from Richter's religious studies prohibits confirmed church members from donating or accepting blood from non-church members. *Id.* at 23.

On January 4, 2022, the governor of Delmont, Constance Girardeau, was informed on PAMA, a piece of legislation considered by the Delmont General Assembly. *Id*. at 39. Due to statistics that revealed child abuse and neglect on the rise, Delmont took steps to ensure protection for minor children by passing the Physical Autonomy of Minors Act. *Id.* at 25–26. This law, commonly referred to as PAMA, strictly 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. *Id.* at 24. With the increase in child victims of abuse and neglect presented by the US department in mind, the governor advocated for the legislation and signed it into law. *Id.* at 39. The law does not refer to any religious group or practice without a secular meaning. *Id.* at 24. Additionally, it extends

protection to all minors and does not permit individualized exemptions. *Id.* The governor took more steps to serve the children in Delmont by having her campaign conduct research on the teenage suicide epidemic and how it was closely linked to cases of abuse, neglect, and domestic violence. *Id*. at 39.

On January 17, 2022, fifteen-year-old Adam Suarez made a significant sacrifice. *Id.* at 25. He attempted to donate the maximum amount of blood to help save a fellow member of the Kingdom Church, Henry Romero. *Id.* at 24–25. While Suarez's actions were noble, they came at a cost – he was admitted into the intensive care unit to recover from acute shock after making the blood donation. *Id.* at 25. He made this sacrifice in accordance with religious beliefs propagated by Kingdom Church and their founder, Richter. *Id.* at 23. In support of her follower, Richter offered interviews to the press during a visit to the hospital. *Id.* at 43. During these interactions with various media outlets, Richter attempted to justify her Church's controversial blood-banking practice. *Id.*

On January 22, 2022, the governor attended a fundraiser where she expressed concern for the children in Delmont. *Id.* at 25. The governor found that children's mental, emotional, and physical well-being was at stake and referred to child abuse and neglect statistics. *Id.* The press asked her about Adam Suarez; she informed the public that she would investigate the Church's blood-bank requirement and whether the Church was subject to PAMA. *Id.* at 26. After this fundraiser, Richter requested injunctive relief to preclude the governor from investigating the church. *Id.* On January 27, reporters asked the governor about recent claims made by the petitioner. *Id.* Richter asserted the Church was being persecuted for its religious beliefs, and the governor replied by calling her a "vampire who founded a cult that preys on its own children."

Id. at 26–27 Following this statement, Petitioner amended her complaint to include a claim for defamation against Governor Girardeau. *Id.* at 27.

II. Procedural History

Richter, the Petitioner in this case, made her initial filing on January 25, 2022. J.A. at 26. She sought to enjoin Governor Girardeau from investigating Kingdom Church because it constitutes a violation of the First Amendment's Free Exercise Clause. *Id.* Following the governor's false statements about Petitioner, Richter amended her complaint to include a defamation action. *Id.*

At the District Court, the judge granted summary judgment in favor of the governor on both the injunction and defamation claims. *Id.* at 27. The District Court concluded that there were no genuine disputes of material fact regarding (1) the governor's statements failing to meet the actual malice standard for defamation of a limited-public figure, and (2) PAMA's neutrality and general applicability. *Id.* at 15, 19. For the first point, the District Court focused on the Petitioner's self-injection into the public eye to conclude that she was a limited public figure. *Id.* at 14. Second, the court found that PAMA applies equally to all minors, not just those involved in Kingdom Church. *Id.* at 19. Accordingly, the governor won on her motion for summary judgment.

The appellate court affirmed summary judgment on both claims. *Id.* at 38. Even though the court stated its qualms with the constitutionality of the actual malice standard, it followed the precedent set in *New York Times v. Sullivan* and determined Richter was a limited-purpose public figure. *Id.* at 32–3. Similarly, the Court followed the District Court on the injunction claim. It found that PAMA is neutral and generally applicable to all children in the state of Delmont. *Id.* at 38.

Given the appellate court's affirmation of summary judgment, Petitioner brought this appeal.

ARGUMENT

I. EXTENDING THE ACTUAL MALICE STANDARD FOR DEFAMATION TO LIMITED-PURPOSE PUBLIC FIGURES, SUCH AS EMMANUELLA RICHTER, IS ESSENTIAL TO MAINTAINING THE FOUNDATIONAL IDEALS OF THE FRIST AMENDMENT.

Constitutional safeguards for defamatory statements made against public figures rest on the following principle: to protect useful speech, we must protect some falsehoods. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341. This idea, supported by some founding fathers, empowers people to speak out on matters of public interest without fear of prosecution for what they might say. *Id.* at 340, 343. By preserving this peace of mind, the United States promotes the marketplace of ideas; a place in which individuals are free to express their ideas and their counterparts are equally unrestricted in choosing the best of those ideas. *Id.* at 339–40. In this scheme, "erroneous statements of fact," i.e., defamatory comments, against public figures are a small price to pay for the freedom to express oneself. *Id.* at 340.

Defamatory statements do not enjoy complete protection, however. Private individuals who keep themselves out of the public eye bear no responsibility for defamation aimed at them. *Id.* at 345. That is, they choose to keep their lives private, so any falsehoods levied against them is no fault of their own. *Id.* The same cannot be said for individuals who thrust themselves into the public light. *Id.* These people make the conscious choice to enter the discourse in their communities or the national stage. *Id.* Courts cannot supply them the same protection as private individuals for two reasons: (1) they have a greater ability to defend themselves against defamation due to their public status, and (2) by inserting themselves into public discourse they must assume the "necessary consequences of that involvement in public affairs." *Id.* at 344.

Still, public figures are not without remedy in defamation. They are simply asked to prove their injury at a higher standard. *New York Times, Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964). Namely, they must show actual malice, or that a defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280. This rule represents a compromise between the public's need to be informed and the private citizen's right to be left alone. *Time, Inc. v. Firestone*, 424 U.S. 448, 456 (1976).

Such is the case for Emmanuella Richter. By thrusting herself into the controversy surrounding her church's practice of blood-banking, she consented to her inclusion in public discourse. Ultimately, cases like hers display why the actual malice standard established by *New York Times, Co. v. Sullivan* needs to extend to limited purpose public figures.

A. Limited-purpose public figures are in a better position than private individuals to defend themselves against defamation.

The elevated position enjoyed by public figures calls for the actual malice standard in their defamation suits as a matter of practicality and policy. The Supreme Court has recognized that, as a practical matter, public figures' access to large groups of people empowers them to employ "self-help" against personal attacks. *Gertz*, 418 U.S. at 344. Using this power, public figures can communicate with large groups of people to spread their message. *Id.* As a policy matter, defamation suits from public figures without the actual malice standard tip the power scales too far in their favor over private individuals. *Id.* In other words, private individuals are already more susceptible to injury from defamatory attacks; thus, providing public figures with easier standards in defamation cases gives them an even greater advantage over private parties than they already have. *Id.* In order to keep private individuals on equal footing with public figures in defamation claims, the actual malice standard must remain in force for limited-purpose public figures.

i. Limited-purpose public figures possess greater reach to combat falsehoods levied against them.

Those under the public eye's gaze often have great media access. *Firestone*, 424 U.S. at 486 (Marshall, J., dissenting). As a result, they are well-equipped to defend themselves against reputational attacks, if they want to do so. *Id.* This reality informs the actual malice standard for defamation of public figures. *Id.* at 453. It acknowledges the balance at play in this area of law between "the public's interest in an uninhibited press and its equally compelling need for judicial redress of libelous utterances." *Id.* at 456. Should the actual malice standard be set aside for limited-purpose public figures, the unequal position of private individuals in defamation suits will surely be expounded. *Gertz*, 418 U.S. at 345.

The power that limited-purpose classification possesses in defamation actions is displayed prominently in two of this Court's cases. First, *Time, Inc. v. Firestone* provides a situation in which a defamation plaintiff was classified as a private individual for the purposes of finalizing her divorce. *Firestone*, 424 U.S. at 455. The plaintiff had married into an extremely wealthy and recognizable family, but eventually her partner filed for divorce due to various extramarital affairs. *Id.* at 450. Seeing an opportunity for an entertaining story, Time published a small article detailing some of the unsavory characteristics of the split. *Id.* at 452. Plaintiff's libel suit followed shortly thereafter. *Id.* On appeal to this Court, one of the questions was whether the plaintiff qualified as a public figure given her extensive involvement with a prominent family. *Id.* at 453. The answer was no; the plaintiff could not be classified as a public figure because she assumed no "special prominence in the resolution of public questions." *Id.* at 454–55 (citations and quotations omitted). Accordingly, Time did not enjoy the protection of actual malice in their defense against the plaintiff. *Id.* at 453.

The second case, *Curtis Pub. Co. v. Butts*, displays a defamation plaintiff as a public figure due to their direct involvement in a matter of public controversy. There, a university athletic director was accused of fixing a college football game in an article published by the defendant. *Curtis Pub. Co. v. Butts,* 388 U.S. 130, 135–36. Ultimately, this Court opined that the plaintiff was a public figure due to his prominence in the sports community and the substantial amount of public interest surrounding his alleged scandal. *Id.* at 154–55.

The key difference in these cases was the plaintiff's reputation in relation to their specific controversy. In *Firestone*, the plaintiff attracted public attention only insofar as she married into a notable family; beyond that, her public influence was nonexistent. Accordingly, her ability to defend herself against libel was minimal. Compare this to the circumstances surrounding the plaintiff in *Curtis Pub. Co.* That individual had preexisting notoriety and significance to the controversy he was trying to fight. Thus, it is unsurprising that this Court classified him as a public figure with the power to spread his own message.

The importance of the self-defense ability possessed by limited-purpose public figures becomes even clearer when we put it in the context of the present case. Emmanuella Richter, through her insertion into the public eye, enjoys the power to defend her image in light of her church's publicly disputed blood-banking practice. She already addressed the press in response to the Adam Suarez incident and maintains her public significance amidst her differences with the Respondent, Governor Girardeau. These circumstances point to the need for the actual malice standard to stay in place for limited-purpose public figures. Without it, these individuals could exploit both their media presence and lower proof standards for defamation. Such a scheme cannot be seen as fair to private individuals.

ii. The proliferation of anti-SLAPP statutes in the states shows the nation's unwillingness to let public figures take advantage of defamation laws to defend their reputations.

Another instrument in the toolbox of some limited-purpose public figures is the Strategic Lawsuit Against Public Participation, or SLAPP. These suits, largely regarded as meritless, are filed with the purpose of chilling the speech of those who dare speak out against public officials.[1] When used properly, SLAPPs force defendants to stop speaking out on particular issues or, in some cases, retract statements levied against the public figures who file the complaint.[2] Notably, public figures do not limit their exercise of this tactic to statements of private individuals; they also go after the speech of other public figures.[3]

Due to the popularity of these suits, states have started to react by passing anti-SLAPP legislation.[4] In fact, up to this point, thirty-two states and the District of Columbia have passed such legislation, generally precluding powerful plaintiffs from taking people to court to stop them from exercising their First Amendment rights.[5] Moreover, similar legislation has been introduced on the House of Representatives floor this past year.[6]

This trend highlights the need for protection of the First Amendment in defamation claims. As noted above, this area of law concerns a balance between two important interests: (1) protecting the public's exercise of freedom of expression, and (2) maintaining the private individual's right to obtain a legal remedy for defamatory slights against him. If anything, the

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[1] Caitlin E. Daday, *(Anti)-SLAPP Happy in Federal Court?: The Applicability of State Anti-SLAPP Statutes in Federal Courts and the Need for Federal Protection Against SLAPPs*, 70 CATH. U.L. REV. 441, 441–42 (2021).
[2] *Id.* at 442.
[3] *See, e.g.*, LastWeekTonight, *SLAPP Suits: Last Week Tonight with John Oliver (HBO)*, YOUTUBE (Nov. 10, 2019), https://www.youtube.com/watch?v=UN8bJb8biZU.
[4] Daday, *supra*, note 1 at 442.
[5] Austin Vining and Sarah Matthews, *Overview of Anti-SLAPP Laws*, REPORTERS COMM. FOR FREEDOM OF THE PRESS, https://www.rcfp.org/introduction-anti-slapp-guide/ (last visited Jan. 29, 2023).
[6] *Chairman Raskin Introduces Legislation Establishing Federal Anti-SLAPP Statute to Protect First Amendment Rights*, JAMIE RASKIN SERVING MARYLAND'S 8TH DISTRICT: PRESS RELEASES (Sept. 15, 2022), https://raskin.house.gov/2022/9/chairman-raskin-introduces-legislation-establishing-federal-anti-slapp-statute-to-protect-first-amendment-rights.

proliferation of anti-SLAPP statutes shows the nation's preference for the former at the cost of the latter. That is, protecting one's right to speak out on matters of local and national importance supersedes the need to protect the reputation of those in the public sphere. Given this attitude, the preservation of the actual malice standard against limited-purpose public figures is imperative. Its presence properly accounts for the power imbalance between public figures and private individuals in defamation suits.

B. Limited-purpose public figures, like Richter, consent to scrutiny by thrusting themselves into public controversy.

Constitutional defamation law concerning public figures follows the basic legal principle of assumption of the risk. *Gertz*, 418 U.S. at 345. This idea that individuals ought to expect public scrutiny after inserting themselves into an important matter is not only natural, but necessary in a society that supports freedom of the speech. *Id.* Tying the hands of those who wish to engage in discussion about issues of public concern would render freedom of speech hollow. *Sullivan*, 376 U.S. at 279. Consequently, this Court has maintained the actual malice standard for limited-purpose public figures by looking to "the nature and extent of an individual's participation in the particular controversy giving rise to the defamation." *Gertz*, 418 U.S. at 352. In this inquiry courts are directed to not label people as a limited-purpose public figures simply because they involve themselves with an event that draws publicity. *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 167 (1979). At the end of the day, courts must be cognizant of whether the individual in question invites attention and comment. *Gertz*, 418 U.S. at 345.

i. Limited-purpose public figures should not enjoy the same protection as private individuals.

Limited-purpose public figures must accept some responsibility for what they do. *Firestone*, 424 U.S. at 456. In other words, those who willingly "thrust themselves to the

forefront of particular public controversies in order to influence the resolution of the issues involved" deserve the media-related consequences that flow from their actions. *Gertz*, 418 U.S. at 345. While this idea sounds simple, it is an entirely natural legal instinct. *Id.* at 344 (explaining that assumption of the risk of negative publicity is a "normative consideration" in justifying the actual malice standard for limited-purpose public figures). Conversely, private individuals ought not bear any responsibility for defamatory statements levied against them because they played no part in their own controversy. *Id.* at 345. Accordingly, they are "more deserving of recovery." *Id.*

This fundamental justification for the actual malice standard is best explained by the paradigm case, *Gertz v. Robert Welch, Inc.* Petitioner was a lawyer who represented a family in a civil case against a police officer who shot and killed their son. *Id.* at 325. Even though the lawyer had nothing to do with the police officer's prosecution, a pro-law-enforcement news outlet published an article smearing the reputation of the petitioner. *Id.* at 325–26. This Court held that the lawyer was not a limited-purpose public figure because he had little to no participation in the controversy that gave rise to his defamation, i.e., he never discussed the case with the press, took part in the officer's prosecution, or do anything more than represent his client. *Id.* at 352. As a result, he bore no responsibility for the publication of false statements published about him. *Id.*

After putting the lawyer's situation in comparison with Emmanuella Richter's, one can see the valid policy behind the actual malice standard. Richter made the conscious choice to interact with the press after the Adam Suarez incident, a public event that was already controversial due to the religious practice she developed. At that point, it would have been fair to say that Richter had thrusted herself into the controversy. However, she took it one step further when she decided to sue Governor Girardeau regarding that same religious practice. Through this

action, Richter engaged the public's attention in an attempt to influence the outcome of her controversy. Toying with the system in this way should certainly subject a limited-purpose public figure to a higher burden in a defamation case.

ii. Without the actual malice standard, defamation challenges to parties speaking out against public figures would not comport with traditional notions of the First Amendment.

Oliver Wendell Holmes is credited with espousing the concept of the "marketplace of ideas."[7] This notion, an original justification behind the freedom of speech, promoted values of diversity, competition, and efficiency in the search for the truth.[8] If ideas were allowed to flow freely, then the best of them would naturally become widely accepted through public scrutiny.[9] The press, if nothing else, is an amplifier of the marketplace of ideas. It gives ideas a far-reaching platform so that others may offer input on their validity.[10] Of course, obtaining the truth requires filtering out falsehoods. Inevitably, some people will perpetuate lies, but that is a tolerable evil in the pursuit of truth. Ultimately, this process leads to wide dispersion of the truth, which leads to a better-informed electorate, which leads to a stronger democracy, and so on.

In theory, there are very few legitimate reasons to inhibit this process. Protecting the reputations limited-purpose public figures has not and should not be one of them. Quoting Judge Learned Hand, the *Sullivan* majority recognized "that right conclusions are more likely to be gathered out of a multitude of tongues than through any kind of authoritative selection." *Sullivan*, 376 U.S. at 270 (citations and quotations omitted). Thus, the actual malice burden properly restricts the authoritative selection of limited-purpose public figures.

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[7] Patrick Garry, *The First Amendment and Freedom of the Press: A Revised Approach to the Marketplace of Ideas Concept*, 72 MARQ. L. REV. 187, 191 (1989).
[8] *Id.*
[9] *Id.*
[10] *Id.*

II. THE FREE EXERCISE CLAUSE AND *SMITH* PROTECT A STATE'S ABILITY TO ENACT LAWS THAT SAFEGUARD THE WELFARE OF ITS RESIDENTS WHEN THE LAW IS NEUTRAL AND GENERALLY APPLICABLE

This Court should affirm the Fifteenth Circuit's decision below that PAMA is constitutional. The Free Exercise Clause applies to the states through the Fourteenth amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Delmont does not have the Religious Freedom Restoration Act (RFRA); therefore, the lower court correctly used the Smith standard to determine whether the law comports with the Free Exercise Clause. *Smith*, 494 U.S. 872 (1990)

The Free Exercise Clause protects the right to believe and profess one's religious doctrine as desired, and that right extends to the performance of physical acts. *Id*. at 877. The government may not compel affirmation or belief, punish the expression of religious doctrine, impose special disabilities, or lend its power to one side or the other. *Id*. If prohibiting the exercise of religion is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the first amendment has not been offended. *Id*. at 878. To permit an individual to violate an otherwise neutral and generally applicable 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. U.S.*, 98 U.S. 145, 167. (U.S)

PAMA comports with the free exercise clause because it is a neutral law of general application. Part II of this brief contains three sections. Section A explains why PAMA is neutral under the Smith standard. Two points support this: (1) PAMA does not facially discriminate and does not impermissibly target religion. Section B further assessed the constitutionality of PAMA and concluded that the law is generally applicable because it does not have exemptions and is equal and not underinclusive. Finally, section C demonstrates the importance of the Smith standard for free exercise cases.

A. PAMA is neutral because it does not discriminate on its face and does not impermissibly target religion.

If the object of the law is to infringe upon or restrict practices because of their religious motivation, the law must be justified by a compelling interest and narrowly tailored to advance that interest. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (U.S.Fla.,1993). If said law fails the test, the law is not neutral and is invalid. *Id*. Neutrality and general applicability are interrelated; failure to satisfy one indicates that the other hasn't been satisfied. *Id*. To determine the object of the law, courts look at the text to determine whether the law discriminates on its face and beyond the text for subtle departments from neutrality. *Id.* PAMA is neutral because it does not discriminate on its face, and it does not target Kingdom Church

i. The text in PAMA shows that the statute does not discriminate on its face.

If a law refers to a religious practice without a secular meaning discernable from the language of the text, the law lacks facial neutrality. *Id*. at 534. In *Lukumi*, this Court held that the text in ordinances passed by the city council supported a conclusion that the city targeted those of Santeria faith. *Id*. Residents' ordinances noted "concern" that "certain religions may engage in practices inconsistent with public morals, peace, or safety" *Id*. at 527. Other resolutions noted "great concern" regarding "public ritualistic animal sacrifices" and declared a policy that opposed ritual sacrifices of animals within the town. *Id*. The Court reasoned that it could not be maintained that the city officials had anything but the Santeria religion on their minds when creating these ordinances. *Id*. Although the Court did not make a finding of facial discrimination, the text supported the conclusion that the laws were designed to suppress the religious practices of the Santeria members because of the choice of words used. *Id*.

Unlike *Lukumi*, PAMA does not have language that indicates a concern or shows any indication that the law was passed regarding religious practices. PAMA "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." J.A. at p. 6. Unlike *Lukumi*, there is no religious connotation in the law that shows the law discriminated based on whether the practice was religious.

ii. PAMA's construction and operative effect reveal that the law does not impermissibly target religion.

The Free Exercise Clause "forbids subtle departures from neutrality" and "covert suppression of particular religious beliefs." *Gillette v. United States*, 401 U.S. 437, 452 (1971). The effect and operation of law are strong evidence of its object. *Lukumi*, 508 U.S. at 535. The government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S.Ct. 1719, 1731 (2018).

In *Lukumi*, this Court looked at the background of the law, a timeline of the ordinances, contemptuous statements made by members of the decision-making body, and the conduct of the ordinances regulated to determine whether the law targeted a religion. *Lukumi*, 508 U.S. at 540. Immediately after the Church leased land and announced plans to establish a house of worship, there was an emergency public session, and multiple resolutions passed. *Id*. at 526. The Court reasoned that the ordinance was created in tandem only to target the religious practice of Santeria church members. *Id*. at 536 Additionally, minutes and excerpts showed hostility and animus from city officials toward the Santeria religion. *Id*. at 541. The Court held that the ordinances must be invalid because the law's function was to suppress Santeria religious worship. *Id*. at 542.

The Court was able to come to this conclusion because of the events preceding the enactment. *Id*. at 540.

Unlike *Lukumi,* where the object of the ordinances was to suppress religion, PAMA had the object of furthering the protection of minors. J.A. at p.37. Unlike the background of the law in *Lukumi*, where the ordinances were created immediately after news of the church was built, PAMA was not made after the Kingdom of Church settled. *Id*. at 3. Delmont's legislative history also revealed that the year before PAMA, Delmont had a similar rule which was less restrictive. However, it only allowed minors to donate in limited circumstances. *Id*. at 24 The exception was for autologous donation in case of medical emergencies for relatives. *Id*. at 5. The slight modification does not support the conclusion that the new law was made with members of the Kingdom Church in mind.

Petitioner argued that PAMA's enactment is related to Kingdom Church's blood banking practice; however, the argument lacks the clear correlation presented in *Lukumi*. There is no evidence of city officials showing animosity, no language indicating the law was enacted due to PAMA, and no operative effect of the act that only targets the Kingdom Church. As the Fifteenth Circuit Court stated, natural factors may have just as provided the push for the legislature's change, including what the governor cited, the rising rate of child abuse. *Id*. at 18. Similarly, although the governor and members of the public saw the 2020 newspaper before the enactment, Plaintiff has not shown that a genuine issue of material fact exists that the article was related to the legislation. *Id*. at 24. A report the governor discussed came out in the same timeframe raising concerns about child abuse. *Id*. at 39 The governor has also clearly shown that her support for PAMA was directly related to the report published by the U.S. Department of Health that cited a

national concern for victims of child abuse. *Id*. The governor's subsequent research also supports that her support for PAMA was due to her concern for the welfare of the children. *Id*.

The Petitioner may point to the statements made by the governor; however, unlike the statements made in *Lukumi* by city officials, the Governor's words were not contemptuous of lawmaking. *Id*. at 26. Specifically, the governor's remarks were made after the law's enactment. *Id*. Therefore, PAMA is neutral because it does not even support the conclusion that it was created with the Church in mind and does not target the Church.

B. PAMA is generally applicable under the standard established in *Smith* and expanded on in *Fulton* and *Lukumi*

If a law invites the government to consider the reasons for a person's conduct by providing individualized exemptions, the law is not generally applicable. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868 (2021). "If a rule exempts or treats more leniently only dissimilar activities," it is constitutional. *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief). If a rule is underinclusive of its objectives and subjects its religious observers to unequal treatment, it transgresses the Free Exercise Clause. *Lukumi*, 508 U.S. 520, 542-543 (U.S.Fla.,1993).

i. PAMA does not have a discretionary element built in, nor are there exemptions available; therefore, the law is general.

When individualized exemptions from a general requirement are an option, the government "may not refuse to extend that system to cases of religious hardship without compelling reason" *Fulton*, 141 S.Ct. 1868 (2021). In *Fulton*, Philadelphia refused to renew their contract with Child Care Agency unless they abode by the contractual non-discrimination requirement. *Id*. at 1878. The provision in the agreement required the agency to provide services to prospective parents regardless of their sexual orientation. *Id*.at 1880. The condition also

included a system for exemptions that were discretionary and individualized. *Id*. at 1878. The Court reasoned that creating an exception at the Commissioner's sole discretion rendered the policy not generally applicable because it invites the government to decide which reasons for not complying with the procedure. *Id*. at 1879. This Court held that the law was not generally applicable because it had a system for exemptions that were discretionary and individualized.

Unlike *Fulton*, Delmont does not have any provision within PAMA that allows a system for discretionary or individualized exemptions. *Id*. at 2. Unlike Philadelphia, Delmont is not creating a pathway for the government to decide which reasons are sufficient to comply with a policy. *Id*. PAMA is generally applicable because it does not have a system for exemptions, and no discretionary functions are involved.

ii. Delmont's enactment of PAMA is not underinclusive or unequal because it aligns with the State's interest in protecting the welfare of the children.

If a law prohibits religious conduct while permitting secular conduct that undermines the government's interests, the law lacks general applicability *Kennedy v. Bremerton School* District, 142 S.Ct. 2407, 2422 (U.S., 2022).

In *Lukumi*, the ordinances were not generally applicable because they were underinclusive and unequal. *Id*. at 544. Although purported to protect public health and prevent animal cruelty, the law failed to prohibit nonreligious conduct but had a similar effect on public health and animal cruelty. *Id*. The Court listed several examples of animal deaths or kills for nonreligious reasons that were not prohibited or approved. *Id*. at 522. Although justifications were given, the Court was not convinced why religion bears the burden. *Id*. As for public health, the ordinances were underinclusive because of other health risks from the disposal of animal carcasses that were not regulated or prohibited. *Id*. at 533. The rules were underinclusive and

unequal because they were written to ensure that almost all circumstances, other than Santeria's sacrifice, went unpunished. *Id*. at 536.

Unlike *Lukumi*, PAMA's interest, which is children's mental, emotional, and physical well-being, concerns all children, regardless of whether they are affiliated with the Kingdom of Church. J.A. at p. 2. The Petitioner argues that PAMA forces Kingdom Church members to choose between following state law and protecting the health of their members. *Id*. at 16. The Petitioner fails to see that this act aims to protect the health of the Kingdom of Church members too. Delmont is taking steps to ensure that children are not susceptible to harm by prohibiting donations of minors. Blood banking practices are still allowed for anyone over sixteen; therefore, those who can make medical decisions do not have to choose between following the state law and protecting their health and those around them. *Id*. at 2.

The act is also not underinclusive because it aims squarely at the age of sixteen and allows minors to make their own body autonomy choices at a more appropriate age. *Id*. PAMA is not underinclusive and equal because it treats all minors similarly, regardless of their religious beliefs. It is centered on children by restricting it to the age of sixteen. *Id*. The interest, the welfare of children, is tailored to ensure that they are not victims of medical procedures or medical decisions they are not capable of consenting to yet. *Id*.

C. In the event this Court revisits Smith, this Court should uphold *Smith*.

Smith is the seminal case for determining whether a law violates the free exercise clause. In *Smith*, this Court upheld a criminal statute that prohibited possession of a controlled substance because it was a neutral and generally applicable law. Smith, 494 U.S. 872. In *Smith*, Respondents ingested a controlled substance comported with their religious belief; however, the practice violated the criminal statute, rendering the respondents ineligible for benefits. The Court

reasoned that so long as the religious practice was not the object of the tax but merely the incidental effect, the First Amendment has not been offended. The holding in Smith aligns with the history of free exercise, it is consistent with cases before the decision, and subsequent cases have relied on Smith to create a framework for determining whether a law aligns with the free exercise clause.

i. Historical Evidence Shows that *Smith* comports with the Free Exercise. Clause.

Although *Smith* has been described as a departure from the traditional definition of the Free Exercise Clause, there is evidence of the contrary. In the eighteenth century, clauses in state constitutions acknowledged an individual's right to the free exercise of religion; however, it also included a carveout, "provided he doth not distribute the public peace[11]." This carveout in the free exercise clause supports *Smith's* long-standing principle that the government can create laws that may incidentally clash with religious beliefs so long as the law does not target a belief[12].

ii. Previous cases support and have paved the way for *Smith*.

In *Reynolds*, this Court held that possessing religious beliefs contradicting with society does not relieve citizens of their societal responsibilities. *Reynolds v. U.S.*, 98 U.S. 145 (U.S). Reynolds reasoned that allowing religious behavior contrary to the law would allow religious doctrines to be the law of the land. *Id*. at 167. Which would then allow every citizen to become a law unto himself. *Id*. Like *Reynolds*, Smith states that those with religious beliefs do not have constitutional exemptions from ordinary laws that don't align with their religious beliefs[13].

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[11] Philip A. Hamburger, *A Constitutional Right of Religious Exemption: An Historical Perspective*, 60 GEO. WASH. L. REV. 915, 919 (1992).
[12] Id. at 919
[13] Christopher Wolfe, *The* Smith *Case, Religious Freedom, and Originalism*, PUB. DISCOURSE (Sept. 23, 2021)

In Smith, this Court distinguished the criminal statute with another case that involved an educational setting. *Smith,* 494 U.S. at 881-82. This Court held that in that hybrid situations which involve the right to free exercise and another constitutional protection, the First Amendment may still bar the application. *Wisconsin v. Yoder*, 406 U.S. 205, 207 (1972). Although the holdings are seemingly different, they rely on each other, if not consistent with each other. Smith is the underlying framework that requires courts to consider whether a law is neutral and generally applicable. However, a secondary analysis is needed if there is another constitutional right. The holding in *Wisconsin* would satisfy that requirement by creating a higher burden on the state when another right is involved. Here, PAMA did not affect a secondary constitutional right. Therefore, a secondary analysis is unnecessary.

iii. Free Exercise Cases have continued to use the standard established in *Smith*.

Although the decision in *Fulton* reached the opposite of Smith's, they are consistent. In *Fulton,* the Court held that a law violated the free exercise clause if it was not neutral or not generally applicable[14]. In Fulton, this court clarified the neutral and generally applicable standards[15]. Fulton's clarification of Smith's rule strengthened the framework and free exercise under Smith[16].

In *Tandon v. Newson,* the Court applied the standard set in Smith. Smith requires that a law be neutral and generally applicable to comport with the free exercise clause. 141 S. Ct. 1294 (2021). In *Tandon,* Plaintiffs brought an action against the State because they were restricted from private gatherings while the state left exceptions and accommodations for secular activities. *Id*. Although the state provided some justification, like *Lukumi*, it must show why the burden

[14] Douglas Laycock & Thomas C. Berg, *Protecting Free Exercise Under* Smith *and After* Smith, 2021 CATO SUP. CT. REV. 33, 34 (2020-2021)
[15] *Id*.
[16] *Id.*

rests solely on religious activities. *Id*. The exemptions from the COVID restrictions were not generally applicable because they gave the government the discretion to decide the sufficient reasons to follow the policy. *Id*. This Court held that a law that applied to religious institutions while leaving other categories exempt was not neutral or generally applicable. *Id.*

Without Smith's neutral and general applicability requirement, states would be powerless to enforce laws necessary to protect the public[17]. The result would be detrimental and could lead to Courts recognizing a free exercise right to discriminate against minorities or protected groups from participating in programs[18]. Without *Smith*, the government cannot enact otherwise neutral and generally applicable law on the account that it inhibits an individual's right to free exercise[19]. This could result in denying healthcare, threatening public health, and refusing mental health treatment[20],

CONCLUSION

Contemplating the validity of the actual malice standard for defamation against limited purpose public figures ultimately comes down to one question: do you value the freedoms guaranteed by the First Amendment more than the individual's right to obtain redress for damage to their reputation? If the answer is no, then you must accept at least three realities: (1) a power imbalance between private individuals and public figures, (2) a lack of public accountability for figures who willingly thrust themselves into public controversy, and (3) press outlets that excessively restrain their ideas for the sake of avoiding endless litigation. To avoid these unfavorable outcomes, this Court must maintain the status quo. The actual malice standard is

[17] Leslie C. Griffin & Marci A. Hamilton, *Why We Like* Smith: *We Want Neutral and General Laws to Prevent Harm*, VERDICT (Apr. 20, 2021).
[18] *Id.*
[19] *Id.*
[20] *Id.*

essential to balancing public and private interests in a world where people can assume a public status for limited purposes. Thus, it must remain the standard of proof for defamation of a limited-purpose public figure.

If laws like PAMA violated the Free Exercise Clause, fear of Reynolds would come to fruition. The effect would be to "permit every citizen to become a law unto himself." The framework established by Smith and further expanded by *Lukumi* and Fulton are necessary to determine whether a law violates the free exercise clause. This Court must uphold PAMA because it is neutral and generally applicable. PAMA is neutral because the text does not contain religious animus. Additionally, the operation of the law does not impermissibly target religion. The law is generally applicable due to its uniformity concerning a minor's blood donation, regardless of whether it is motivated by religious beliefs. Moreover, the law is equal and not underinclusive as it applies in all scenari**o**s. Preventing states like Delmont from enacting laws like PAMA would render the state helpless in protecting and providing for the welfare of its residents.

APPENDIX

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.

DELMONT STATUTE
Strictly 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.

BRIEF CERTIFICATE

All the work product contained in all copies of our team's brief is in fact the work product of the team members. We the team members have complied fully with the school's governing honor code, and we have complied with all Rules of the Competition.