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 NUMBER 22

Counsel for Respondent

QUESTIONS PRESENTED

I. Whether it is constitutional to apply the *New York Times v. Sullivan* standard to limited-purpose public figures who voluntarily influence public debate on issues in which they have expertise and are prominently involved.

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

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The opinion of the District Court for the District of Delmont is available as Richter v. Girardeau, C.A. No. 22-CV-7855 (Sept. 1, 2022) and can be found in the record at 2–20. The opinion of the Court of Appeals for the Fifteenth Circuit is available as Richter v. Girardeau, 2022-1392 (Dec. 1, 2022) and can be found in the record at 21–38.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered a final judgment on this matter on December 1, 2022. R. at 38. Petitioner filed a petition for a writ of certiorari which this Court granted. R. at 46. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

Petitioner Emmanuella Richter, a scholar in comparative religion, founded the Kingdom Church in the South American country of Pangea, after years spent synthesizing the core essence of the religious experience. R. at 3. Over time, Petitioner and her husband, a wealthy Pangea tea grower, built the church a wide following through door-to-door proselytization and seminars for interested members. R. at 3. In 2000, a military coup gained control of the Pangea government, and the Kingdom Church became the subject of governmental repression. R. at 3. Petitioner and her husband, accompanied by a large segment of the church congregation, sought and were granted asylum in the United States. R. at 3. They settled in southern Delmont, in the port city of Beach Glass, where their numbers continued to grow. R. at 3–4.

Members of the Kingdom Church live in designated compounds throughout the southern portion of Delmont. R. at 4. Each compound provides for its needs through agricultural

initiatives and the commercial sale of "Kingdom Tea," which Petitioner's husband oversees through his expertise. R. at 4. All proceeds from the sale of Kingdom Tea go toward the operation of the church. R. at 4. Though most members work in the compounds, they are not forbidden from outside work. R. at 4. All income is shared among residents of the compounds. R. at 4. Petitioner dedicates herself solely to the work of the Kingdom church, primarily through managing operations and organizing church seminars. R. at 4. These seminars, which provide information about the church's history, beliefs, and lifestyle, are open to the public. R. at 4. Petitioner is involved, but does not herself participate, in conducting the seminars and proselytizing door-to-door. R. at 4.

Individuals interested in joining the Kingdom Church must undergo an intensive course of study. R. at 4. They must first "achieve a state of enlightenment," after which they must be confirmed in a private ritual. R. at 4. In the eyes of the Church, anyone who has reached the age of fifteen is considered to have obtained "the state of reason." R. at 4. Thus, anyone fifteen years of age or older can become a confirmed member of the Church. R. at 4. Once confirmed, an individual must marry within the Church, raise all children within the Church's belief system, and agree to homeschool their children with a curriculum of both traditional and religious classes. R. at 4.

The Kingdom Church became part of a statewide controversy due to one particular religious practice: confirmed members of the Church are not permitted to accept or donate blood to non-members. R. at 5. Accordingly, all members are required to bank their blood at local blood banks; this is considered a "central tenant of the faith." R. at 5. Members who have reached the age of fifteen, once confirmed, must donate blood as one of their required homeschool activities. R. at 5. The Church considers this to be a "Service Project," which

benefits the community as a whole and helps develop a young member's spiritual growth. R. at 5. Other service projects include gardening, cleaning the grounds, collecting food and clothes for local donations, and recycling. R. at 5. The blood donations occur on a schedule and in accordance with Red Cross guidelines. R. at 5. Confirmed students may skip a donation if they are sick on that particular day. R. at 5.

The immense popularity of Kingdom Tea, combined with the reclusive nature of the Kingdom Church, prompted the local newspaper *The Beach Glass Gazette* to run a 2020 story about the Church. R. at 5. The story, which included reporting on the blood-banking practices of the Kingdom Church, raised an outcry across the community. R. at 5. The community's primary concern involved the ethics of the practice; specifically, members of the community expressed concern that minors could not legitimately consent and were being procured by church officials for blood-banking purposes. R. at 5.

In 2021, the Delmont General Assembly passed a statute, the "Physical Autonomy of Minors Act" ("PAMA"), forbidding the procurement, donation, or harvesting of the bodily organs, fluids, or tissue of an individual under age sixteen, regardless of profit or consent. R. at 6. Prior to the passing of PAMA, Delmont law prohibited minors under age sixteen from consenting to the same donations, except in the case autologous donations or medical emergencies involving consanguineous relatives. R. at 5. Respondent, Governor Constance Girardeau, advocated for PAMA and eventually signed it into law. R. at 6.

In January 2022, a van used by the Kingdom Church's Beach Glass compound to sell and deliver Kingdom Tea was involved in a massive, multi-car crash. R. at 6. Dozens of people, including ten members of the Church, died in the accident. R. at 6. The driver of the van, Henry Romero, survived the crash, but was admitted to the hospital in critical condition. R. at 6.

Doctors determined that he needed a lifesaving operation, requiring a blood donation. R. at 6. Romero's cousin, fifteen-year-old Adam Suarez, was identified as a blood type match; however, after the passing of PAMA, he was not legally allowed to donate blood. R. at 6. Suarez, who had recently been confirmed in the Church, was brought by his parents to the Red Cross donation center to donate blood for the first time in his life. R. at 6. During his donation, Suarez's blood pressure became highly elevated, and he went into acute shock. He was moved into intensive care. R. at 6.

The media began to report on the Adam Suarez story. R. at 6. During a hospital visit, Petitioner and her husband participated in a media interview. R. at 6–7. Media reporting included references to Suarez's donation, the Kingdom Church's blood-banking requirements, and details on the passing of PAMA. R. at 7. Suarez recovered, but doctors advised his parents against future blood donations. R. at 7.

During her 2022 reelection campaign, Governor Girardeau expressed concern over a crisis of mental, emotional, and physical issues among Delmont's minor residents. R. at 7. She cited statistics from the Department of Health and Human Services which showed a major spike in child abuse and neglect between 2016 and 2020. R. at 7. Additionally, according to the CDC, over a quarter of children who died by suicide had been the victims of child abuse or neglect; children of immigrants were suffering especially high rates of such harm. R. at 7. When asked about the Adam Suarez story, Respondent answered that she had begun an investigation into the Church's blood-banking practices. R. at 7. Respondent explained that the investigation would help determine whether PAMA, or any other law, was implicated in what she called "the exploitation of the Kingdom Church's children." R. at 7. Polling showed that this garnered support among her constituents. R. at 7.

On January 25, 2022, Petitioner, as head of the Kingdom Church, requested injunctive relief from the Delmont Superior Court. R. at 7. She sought to stop Governor Girardeau's investigation into the legality of the Church's blood-banking requirements, claiming that the investigation constituted a violation of the First Amendment's Free Exercise Clause. R. at 7–8. Petitioner further claimed that the government was persecuting the Church for its religious beliefs. R. at 8.

At a press event two days later, Respondent was asked about Petitioner's lawsuit; reporters were particularly interested in Petitioner's claim of religious persecution. R. at 8. Respondent said: "I'm not surprised at anything Emmanuella Richter does or says. What do you expect from a vampire who founded a cult that preys on its own children?" R. at 8. Based on this statement, Petitioner amended her complaint to include an action for defamation. R. at 8.

Respondent moved for summary judgment, which the District Court granted on both the defamation claim and the constitutional challenge to the investigation into the Kingdom Church. R. at 20. On December 1, 2022, the Court of Appeals for the Fifteenth Circuit affirmed the judgment below. R. at 38. This Court granted certiorari.

SUMMARY OF ARGUMENT

Under the First Amendment to the United States Constitution, the government is prohibited from "abridging the freedom of speech." U.S. Const. amend. I. To sustain a claim for defamation, a claimant generally must show that the speech was false. When a statement concerns a public figure, however, the burden is increased: in those cases, the claimant must show that the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). This

heightened burden—the "actual malice" standard—extends to those figures who are public for only limited purposes. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974). This is justified by those individuals' increased access to the media, which allows them to counter criticism, and the power they have to "influence the resolution of the issues involved." *Id.*

Here, Petitioner was a public figure for the purposes of this controversy. She voluntarily spoke with the media about the subject of the debate, had power to influence public opinion about the issues involved, and had expertise in the topic. As a constitutional matter, she must meet the *New York Times* standard of showing that Respondent's statements were made with "actual malice." She fails to meet this burden, and the ruling of the Court of Appeals should be affirmed.

The Court of Appeals' ruling rejecting Petitioner's second claim should likewise be affirmed. A law that is neutral and generally applicable does not violate the Free Exercise Clause even if the law has an incidental effect on religious exercise. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876–77 (2021) (citing *Emp. Div. v. Smith*, 494 U.S. 872, 876 (1990)). Laws that are not neutral or generally applicable must undergo strict scrutiny. *Id.* The Physical Autonomy of Minors Act is neutral and generally applicable because it does not disfavor religion and does not provide a mechanism for individualized exemptions. Even if this Court determines that the PAMA is either not neutral or not generally applicable, the PAMA still survives strict scrutiny review. It is narrowly tailored to advance "interests of the highest order." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Delmont has a compelling interest in preventing minors who are incapable of giving true consent from donating bodily organs and fluids.

Finally, *Smith* should not be overruled. As it was originally understood, the Constitution did not guarantee religious exemptions. A careful analysis of the historical background of the

drafting of the Constitution shows that the Founders did not envision religious exemptions from neutral and generally applicable laws. Furthermore, *Smith* was correct as a matter of judicial policy, because it ensures that judges do not "question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Smith*, 494 U.S. at 886–87. Finally, *stare decisis* principles require the Court to leave *Smith* untouched. Overturning *Smith* would upset reliance interests, and ultimately, *Smith* does not exhibit the necessary characteristics of incorrect precedents.

Because the Court of Appeals was correct as a matter of constitutional law in extending the *New York Times* standard to Petitioner, and because the Physical Autonomy of Minors Act is neutral and generally applicable, this Court should affirm the ruling of the Fifteenth Circuit Court of Appeals.

ARGUMENT

I. Petitioner is a limited-purpose public figure and cannot meet her burden of showing that Respondent acted with actual malice.

"The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by [the Court's] decisions." *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). The Founders believed that a free press would advance not only responsible government, but also "truth, science, morality, and arts in general." *Curtis Pub. Co. v. Butts, 388 U.S.* 130, 147 (1967) (quoting Letter to the Inhabitants of Quebec, 1 Journals of the Continental Cong. 108). The *New York Times* standard, then, exists not only to allow open discussion about government actors or public officials. Nor should it be limited to all-purpose public figures. The standard exists to protect the subject of the debate; thus, "a rational distinction 'cannot be founded on the assumption that criticism of private citizens who seek to

lead in the determination of policy will be less important to the public interest than will criticism of government officials.'" *Curtis Pub. Co. v. Butts, 388* U.S. at 147–48. Here, Petitioner sought to lead in the determination of policy when she participated in interviews and organized seminars which were open to the public. Furthermore, as the leader and founder of the influential Kingdom Church, Petitioner had an important role in discussions and decisions involving issues of great public concern.

A. First Amendment protections extend to speech criticizing limited-purpose public figures.

The preservation of free and unrestricted expression about public leaders is at the heart of the First Amendment. Accordingly, this case must be considered "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wideopen, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times*, 376 U.S. at 270. As subsequent cases have recognized, that commitment is no less true when the public figures are not government officials, but wield a similar power to influence the course of policy and debate. "An unconditional right to say what one pleases about public affairs is . . . the minimum guarantee of the First Amendment," and it should not "depend upon [a public figure] being 'arbitrarily labeled a public official.'" *Pauling v. Globe-Democrat Pub. Co.*, 362 F.2d 188 (1966) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254 (Black, J., concurring)).

Though the Court of Appeals here affirmed the District Court, it noted in dicta that the concept of limited-purpose public figures is "constitutionally problematic because they are not so clearly different from private individuals." *Richter v. Girardeau*, 2022-1392 (15th Cir. 2022). Much of its reasoning, however, was grounded in the assumption that limited-purpose public figures are generally "those unfortunate enough to be 'drawn into a particular public

controversy.'" *Id.* (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 351 (1974)). But, in quoting from *Gertz*, the Court of Appeals did not include the operative language in the very same passage: an individual who "voluntarily injects himself or is drawn into a particular public controversy" thereby becomes a public figure, not for all purposes, but only "for a limited range of issues." *Gertz*, 418 U.S. at 351. An individual becomes a public figure, and is therefore responsible for proving actual malice under the *New York Times* standard, only in relation to the power they wield. That is precisely the value of extending the *New York Times* standard to limited-purpose public figures: it extends only as far as their publicity and power extends, and thus preserves the intention of the First Amendment's free speech protection.

The importance of this question cannot be overstated; "the rules [the Court] adopt[s] to determine an individual's status as 'public' or 'private' powerfully affect the manner in which the press decides what to publish and, more importantly, what not to publish." *Lorain J. Co. v. Milkovich*, 474 U.S. 953, 954 (1985) (Brennan, J., dissenting) (quoting Curtis Pub. Co., 388 U.S. at 164). In cases of defamation, the Court's decisions affect the freedom of citizens to discuss and question those in power. Accordingly, the Court should not draw lines too narrowly "if the freedoms of expression are to have the 'breathing space' that they 'need to survive.'" *New York Times*, 376 U.S. at 271–72 (quoting *N.A.A.C.P. v. Button*, 371 U.S. 415, 433). The freedom of speech, "if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 12 (1970) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940)).

B. <u>Under the facts of this case, the Court of Appeals correctly held that Petitioner is a limited-purpose public figure.</u>

Petitioner was a public figure for the purposes of this controversy, because she voluntarily spoke with the media about the subject of the debate, had power to influence public opinion about the issues involved, and had expertise in the topic. She is therefore constitutionally subject to the *New York Times* standard.

The *New York Times* standard constitutionally extends to individuals who voluntarily become involved in matters of public concern. "It is preferable to reduce the public-figure question to a more meaningful context 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. The inquiry is focused on an individual's involvement in the topic at issue, not the individual's general fame. This was true long before *New York Times* was decided, and it remains true now.

The First Amendment protects the right of the public to engage in debate on important issues. Public figures, like government officials, "often play an influential role in ordering society." *Curtis Pub. Co.*, 388 U.S. at 164. Importantly, public figures have "ready access . . . to mass media of communication, both to influence policy and to counter criticism of their views and activities." *Id.* It is crucial that the public be able to engage in uninhibited debate about these issues, and consequently, about the leaders who influence public policy. That some leaders are not involved in the political process "only underscores the legitimate and substantial nature of the interest, since it means that public opinion may be the only instrument by which society can attempt to influence their conduct." *Id.* First Amendment Protections, then, must extend to speech made with regard to important public issues; whether the figure is sufficiently public is of secondary importance to whether the issues they influence are matters of public concern.

The *New York Times* standard extends to those who voluntarily insert themselves into a public debate in order to influence the resolution of the issue involved. *See Gertz*, 418 U.S. at

345. Thus, the standard is focused on the degree of "persuasive power and influence" an individual wields. *Id.* A government official or national celebrity carries such power in nearly all circumstances; they are therefore "deemed public figures for all purposes." *Id.* A limited-purpose public figure wields similar power, albeit in fewer circumstances. When the alleged defamation occurs in relation to those circumstances, the *New York Times* standard should apply. It is, after all, focused on the amount of power an individual has in a given context, rather than the number of contexts in which an individual has power.[1] The petitioner in *Gertz* was "well known in some circles," but "he had achieved no general fame or notoriety in the community." *Id.* at 351. The Court looked at "the nature and extent of [his] participation in the particular controversy giving rise to the defamation," and found that the petitioner "did not thrust himself into the vortex of this public issue, nor did he engage the public's attention in an attempt to influence its outcome." *Id.* Notably, the petitioner did not discuss the issue with the media. Recognizing this, the Court determined that the petitioner was not a public figure for the purposes of the defamation alleged.

Individuals who influence public debate on matters in which they are involved, or have expertise in, may be limited-purpose public figures. *See Pauling v. Globe-Democrat Pub. Co.*, 362 F.2d 188 (8th Cir. 1966). In *Pauling*, the petitioner was a well-known scientist and academic. *See id.* at 189. The alleged libel arose from a controversy over his attempts to promote a nuclear test ban treaty. The fact that he was an expert and was criticized after speaking on his area of expertise were relevant. So too was it important that the petitioner independently chose to bring the actions. *See id.* at 196 ("His instigation of the several lawsuits

[1] *See, e.g., Tavoulareas v. Piro,* 817 F.2d 762, 772 (D.C. Cir. 1987) ("[T]he scope of the controversy in which the plaintiff involves himself defines the scope of the public personality.").

we have described above is a self-evident additional factor."). Additionally, the Eighth Circuit emphasized his leadership role, noting that "any significant leader may possess a capacity for influencing public policy as great or greater than that of a comparatively minor public official who is clearly subject to New York Times." *Id.* Thus, "if such a person seeks to realize upon his capacity to guide public policy and in the process is criticized, he should have no greater remedy than does his counterpart in public office." *Id.*

Here, Petitioner's status among followers as a religious leader, and among the general community as a religious expert, gave her great influence. She had ready access to media to counter criticism; indeed, she participated in media interviews to do precisely that. It is also important to consider those Beach Glass citizens who live in the commune. Within that community, Petitioner is more similar to an all-purpose public figure. If those citizens are not guaranteed the freedom to speak about Petitioner simply because her publicity is limited to their community, they are essentially without influence over the issues most important to them. Refusing to extend the *New York Times* standard to community figureheads is, for that community, akin to refusing to extend it to clear public officials. For those residents of Delmont who reside in Kingdom Church compounds, "public opinion may be the only instrument by which [they] can attempt to influence the[] conduct" of their leader. *Curtis Pub. Co.*, 388 U.S. at 164. And, as exemplified by the concerns over the Kingdom Church's treatment of its children, Petitioner has shown herself to have significant power to "shape events in areas of concern to society at large." *Id.*

Petitioner also wields immense and unchecked power, both economically and socially, to "influence the resolution of the issues involved" in this case. *Gertz*, 418 U.S. at 345. Economically, her role in the production and distribution of Kingdom Tea made her a

cornerstone of the Delmont economy. Unlike the petitioner in *Gertz*, Petitioner here chose to speak about this particular controversy with the media. Furthermore, her role in the church was intimately related to the present controversy; by recruiting members, proselytizing door-to-door, and speaking publicly about issues of concern in the community, Petitioner "assume[d] special prominence in the resolution of public questions." *Id.* at 351. Nor was Petitioner thrust into the forefront of this controversy against her will. Like the petitioner in *Pauling*, Ms. Richter independently chose to bring suit. Just as the petitioner in that case was a well-known scientist and author, Ms. Richter is an expert in her field. A "scholar in comparative religion," she "spent years interpreting the sacred foundational texts of world faiths." R. at 22. This is not a case of a private citizen being involuntarily pushed into the public eye; this is a prominent leader stepping into the spotlight of her own accord.

Because Petitioner voluntarily entered this controversy and has great power to influence the resolution of the issues involved, the *New York Times* standard constitutionally must extend to her.

C. Petitioner has failed to show that Respondent acted with actual malice.

Petitioner has failed to show that Respondent acted with "actual malice," because mere expressions of opinion are not covered by defamation law, and because her statements were not made with actual knowledge of falsity or reckless disregard as to their falsity.

The "actual malice" standard serves to determine "the line between speech unconditionally guaranteed and speech which may legitimately be regulated." *New York Times*, 376 U.S. at 285 (quoting *Speiser v. Randall*, 357 U.S. 513, 525 (1958)). "Actual malice" requires a plaintiff to show with "convincing clarity" that a false statement was made "with

knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 280, 285–86. The "reckless-disregard-of truth standard" is necessarily harder to meet that a "reasonable-belief" standard and is "not keyed to ordinary care." *Garrison v. State of La.*, 379 U.S. 64, 79 (1964). Reckless disregard for the truth is not satisfied if a claim is never investigated by the publisher; rather, the publisher must act with a "high degree of awareness of . . . probable falsity." *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 332(1974) (citing *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)).

Mere expressions of opinion are not covered by defamation law. *Gertz*, 418 U.S. at 339. In *Gertz*, the Supreme Court asserted that it was "common ground" that "[u]nder the first Amendment, there is no such thing as a false idea." *Id.* No matter how "pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Id.* at 339–40. Moreover, even an unreasonable statement made with "ill-will, enmity, or a wanton desire to injure" does not satisfy the "actual malice" standard if the Plaintiff still cannot make a showing that the statement was false and made with knowledge of falsity or a reckless disregard for the truth. *Garrison*, 379 U.S. at 78. In *Garrison*, a district attorney was charged with criminal defamation for asserting that his efforts to enforce vice laws were hampered by "racketeer influences on our eight vacation-minded judges." *Id.* at 67. The Louisiana Supreme Court in that case affirmed the conviction, asserting: "It is inconceivable . . . that the Defendant could have had a reasonable belief, which could be defined as an honest belief, that not one but all eight of these Judges of the Criminal District Court were guilty of what he charged them with in the defamatory statement." *Id.* at 78–79. But the United States Supreme Court reversed, holding that it did not matter whether the defendant's belief was

conceivable or reasonable to a factfinder. *Id.* at 79. Thus, the state court had wrongly applied a test for negligence, and not the appropriate "actual malice" defamation standard. *Id.*

Here, Petitioner made two statements, one which was not made with knowledge of falsity or recklessness, and one which merely expressed her opinion. The first statement, which referred to "the exploitation of the Kingdom Church's children," was made without knowledge, or even suspicion, of falsity. R. at 7. On the contrary, Respondent cited statistics to support the statement. Like the district attorney's statements in *Garrison*, Respondent's assertions were supported by belief; it does not matter whether that belief is conceivable or reasonable in retrospect. Respondent's second statement, which likened Ms. Richter to "a vampire" and referred to the Kingdom Church as "a cult that preys on its own children," was an expression of Ms. Girardeau's opinion. R. at 8. Such a statement does not constitute defamation under *Gertz*, because "there is no such thing as a false idea." *Gertz*, 418 U.S. at 339. As a limited-purpose public figure, Petitioner had access to media and the power to influence public debate; she was not without recourse to assert competing ideas or refute Respondent's expressions of opinion.

Because Petitioner fails to meet her burden of showing that Respondent acted with "actual malice," her defamation claim must fail as a matter of constitutional law.

II. The Physical Autonomy of Minors Act is neutral and generally applicable because it does not disfavor religion and does not provide a mechanism for individualized exemptions, and *Smith* should not be overruled.

A. The PAMA is neutral and generally applicable because it does not disfavor religion and does not provide a mechanism for individualized exemptions.

A law that is neutral and generally applicable does not violate the Free Exercise Clause even if the law has an incidental effect on religious exercise. *Fulton*, 141 S. Ct. at 1876–77

(citing *Smith*, 494 U.S. at 876). Laws that are not neutral or generally applicable must undergo strict scrutiny. *Id.*

1. The PAMA is neutral towards both religion and non-religion because it does not target any religious group.

A law is neutral as long as it does not devalue religion. *Lukumi*, 508 U.S. at 537–38. A law devalues religion when it judges religious reasons for an action to be of lesser importance than non-religious reasons. *Id.* at 532, 537. Moreover, laws are neutral with respect to religion as long as they do not facially discriminate on the basis of religion. *Id.* at 533. Finally, neutral laws do not permit the government to act "in a manner intolerant of religious beliefs." *Fulton*, 141 S. Ct. at 1877 (citing *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 138 S. Ct. 1719, 1730–32 (2018)).

Here, the PAMA is neutral with respect to religion. The PAMA is unlike the law at issue in *Lukumi*, where the Court held that a city ordinance devalued religion and was not neutral when it allowed citizens to kill animals for food purposes but not for religious sacrifice. *Lukumi*, 508 U.S. at 537. The PAMA completely prohibits "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. at 2. It does not permit these activities for some secular reasons and not for religious reasons—the PAMA forbids it all.

Therefore, the PAMA is therefore neutral because it neither devalues nor discriminates against religion.

2. The PAMA is generally applicable because it applies to all minor residents of Delmont regardless of religion, and it does not treat nonreligious activity more favorably than religious activity.

First, a law is generally applicable as long as it does not provide a mechanism for individualized exemptions at the government's "sole discretion." *Fulton*, 141 S. Ct. at 1877–78. Second, a law is generally applicable as long as it does not prohibit religious conduct while permitting non-religious conduct that similarly undermines a government's asserted interests. *Id.* In other words, a generally applicable law does not provide exemptions only for some reasons and not others. *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999). Finally, a law is generally applicable as long as it does not treat nonreligious activity more favorably than religious exercise. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296–97 (2021); *Roman Cath. Diocese v. Cuomo*, 141 S. Ct. 63, 67–68 (2020). Whenever a law treats religious and nonreligious activity the same, it is generally applicable. *Id.*

Here, PAMA provides for no exemptions. It does not prohibit religious conduct while permitting non-religious conduct that similarly undermines a government's asserted interests. *Fulton*, 141 S. Ct. at 1877–78. Instead, it prohibits the donation of bodily organs and fluids by *all* minor citizens of Delmont and for whatever reason.

In sum, the PAMA is generally applicable because it does not provide a mechanism for individualized exemptions similar to the kind the Court strikes down for fear of placing "sole discretion" in the hands of the government, and it does not treat nonreligious activity more favorably than religious exercise. The PAMA is neutral and generally applicable under *Smith*'s progeny. Therefore, any of the PAMA's incidental effects on religious exercise are constitutional.

B. Alternatively, even if the PAMA is not neutral or generally applicable, it survives strict scrutiny because it is narrowly tailored to advance the state's interest in protecting its minor children.

If this Court determines that the PAMA is either not neutral or not generally applicable, the PAMA still survives strict scrutiny review. It is narrowly tailored to advance "interests of the highest order." *Lukumi*, 508 U.S. at 546. More precisely, Delmont has a compelling interest in preventing minors who are incapable of giving true consent from donating bodily organs and fluids. The importance of this goal is highlighted by the Delmont General Assembly's decision not to include any exemptions in the statute; after all, there is no compelling interest in allowing a nonconsenting minor to undergo such a procedure. The PAMA is narrowly tailored to achieve the state's interest because there are no exemptions provided for any reason.

In conclusion, the PAMA does not violate the Free Exercise Clause because it is neutral and generally applicable. And even if it is neither, it satisfies the demands of strict scrutiny in religious freedom contexts. Therefore, any burdens on the Kingdom Church are constitutional.

C. *Smith* should not be overruled because doing so would be contrary to history, strip religious claimants of protections, and would contravene stare decisis principles.

The Court should not overrule *Smith* because the Constitution, originally understood, did not guarantee religious exemptions, *Smith* was correct as a matter of judicial policy, and *stare decisis* principles require the Court to leave *Smith* untouched. If the Court revisits *Smith*, it should leave in place a doctrine that permits the government to restrict religious activity as long as there are alternatives to that activity that can accomplish the same objective.

1. The Founders did not understand the Free Exercise Clause to include religious exemptions from neutral and generally applicable laws.

An original, historical understanding of the Constitution indicates that the Founders did not understand the Free Exercise Clause to encompass religious exemptions from neutral and generally applicable laws. VINCENT PHILLIP MUÑOZ, RELIGIOUS LIBERTY AND THE AMERICAN FOUNDING

184 (2022). On the contrary, the Second Amendment's drafting history and state courts' lack of interpretations that the Free Exercise Clause includes exemptions from generally applicable laws indicate that the Founders did not assume individuals would receive religious exemptions from neutral and generally applicable laws.

First, Constitutional drafting history indicates that in passing the Second Amendment, the First Congress "considered and rejected constitutional text that would have provided a right to religious exemptions from burdensome laws." MUÑOZ, *supra*, at 205. Despite various House members' advocacy for an in-text conscience exemption to the draft, the First Congress ultimately voted against a constitutional exemption from the draft. *Id.* at 205–06. Moreover, there is no evidence that any House representative carried the debate of the importance of a Second Amendment conscience exemption to debates over the Free Exercise Clause. *Id.* at 206. Therefore, First Congress's exclusion of a conscience exemption from the draft and the lack of evidence that similar concerns carried into the Free Exercise Clause debates indicate that the Founders did not envision religious exemptions from neutral and generally applicable laws.

Second, state courts from the Founding until the Civil War did not interpret free exercise protections to include exemptions from generally applicable laws. *See* Vincent Phillip Muñoz, *The Original Meaning of the Free Exercise Clause: The Evidence from the First Congress*, 31 Harv. J.L. & Pub. Pol'y 1083, 1099 (2008); Gerard V. Bradley, *Beguiled: Free Exercise Exemptions and the Siren Song of Liberalism*, 20 Hofstra L. Rev. 245, 276–95 (1991). Because antebellum state courts refused to systematically create religious exemptions in this context, they understood exemptions to remain within the realm of the legislature—not the judiciary. Muñoz, *supra*, at 1099.

In sum, the Constitution's drafting history affirms that the Founders and states did not believe in religious exemptions from neutral and generally applicable laws. Therefore, *Smith* aligns with history as it is correctly understood.

2. *Smith* protects religious freedom claimants from discrimination and discretion.

Religious freedom doctrine enshrines a principle of protecting claimants from discrimination and discretion. Indeed, *Smith* protects claimants from government overreach by subjecting laws that permit government discretion to the most demanding scrutiny. *See Fulton*, 141 S. Ct. at 1883 (Barrett, J., concurring) ("A longstanding tenet of our free exercise jurisprudence—one that both pre-dates and survives *Smith*—is that a law burdening religious exercise must satisfy strict scrutiny if it gives government officials *discretion* to grant individualized exemptions." (emphasis added)). And it is "not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Smith*, 494 U.S. at 886–87.

3. Stare decisis indicates that *Smith* should remain in place.

Time and time again, "[f]idelity to precedent—the policy of stare decisis—'is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 377 (2010) (Roberts, C.J., concurring) (citation omitted). Thus, "departures from precedent are inappropriate in the absence of a 'special justification.'" *Id.* (citation omitted). Here, there is no such special justification. First, *Smith* is not "grievously or egregiously wrong," for it protects religious claimants from discretionary decisions. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1414 (Kavanaugh, J., concurring). Second, *Smith* has not caused "significant negative jurisprudential

or real-world consequences." *Id.* at 1415. The Supreme Court's recent *Smith* decisions give lower courts examples of the rule's workability, create consistency, and provide coherent application examples. *See id.* Finally, overturning or changing *Smith* would upset reliance interests, especially given the significant number of recent Supreme Court cases that have applied *Smith*. *See id.* Ultimately, *Smith* does not exhibit the necessary characteristics that incorrect precedents exhibit. This Court should not overrule *Smith*.

4. <u>If the Court revisits *Smith*, it should leave in place a doctrine that allows the government to restrict any religious activity that has adequate alternatives.</u>

If this Court overrules *Smith*, it should draw upon other areas of constitutional jurisprudence to craft a new standard for religious exemptions from neutral and generally applicable laws. Instead of asking whether a certain activity can be exempted from neutral and generally applicable laws, which would be inconsistent with history, the Court should re-evaluate what counts as a substantial burden on free exercise in the first place. The Court should determine whether a government action is a substantial burden, as Professor Sherif Girgis proposes, by asking whether the government action leaves a religious claimant another way to realize his religion to "*about the same degree* as [he] could by the now-burdened means of exercise, and at *not much greater cost* than [he] could by that means." Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1795, 1793–97 (2022). In other words, if a government burdens an activity to which there are adequate alternatives of achieving the same result, the government does not substantially burden free exercise in the first instance. *Id.* at 1793–97. This standard ensures that religious claimants who truly need accommodations remain protected while adhering to *Smith*'s principles. *Id.* at 1795–96.

Ultimately, the people of a state must be able to create and enforce societal standards through generally applicable and neutral laws. *Smith* permits them to do so while protecting religious claimants from unjust and discretionary laws that are genuinely not neutral or not generally applicable. The PAMA poses no such threat. Holding otherwise would contravene this Court's decisions in recent years and would undermine the doctrine's values.

CONCLUSION

For the foregoing reasons, Respondent Constance Girardeau respectfully requests that this Court affirm the decision of the Fifteenth Circuit Court of Appeals.

APPENDIX

Constitutional & Statutory Provisions:

The First Amendment to the United States Constitution: "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." U.S. Const. amend. I.

The Physical Autonomy of Minors Act, as paraphrased by the Court of Appeals for the Fifteenth Circuit: "forb[ids] 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."

CERTIFICATE OF COMPLIANCE

Team 22 affirms that:

i. The work product contained in all copies of the team's brief is in fact the work product of the team members;

ii. The team has complied fully with its law school's governing honor code;

iii. And the team has complied with all Competition Rules.

Respectfully submitted,

Team 22

Counsel for Respondent

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