

No. _____

In the
Supreme Court of the United States

THE ANDY WARHOL FOUNDATION FOR THE VISUAL
ARTS, INC.,

Petitioner,

v.

LYNN GOLDSMITH AND LYNN GOLDSMITH, LTD.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly made clear that a work of art is “transformative” for purposes of fair use under the Copyright Act if it conveys a different “meaning[] or message” from its source material. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994); *Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183, 1202 (2021). In the decision below, the Second Circuit nonetheless held that a court is in fact forbidden from trying to “ascertain the intent behind or meaning of the works at issue.” App. 22a-23a. Instead, the court concluded that even where a new work indisputably conveys a distinct meaning or message, the work is not transformative if it “recognizably deriv[es] from, and retain[s] the essential elements of, its source material.” *Id.* at 24a. The question presented is:

Whether a work of art is “transformative” when it conveys a different meaning or message from its source material (as this Court, the Ninth Circuit, and other courts of appeals have held), or whether a court is forbidden from considering the meaning of the accused work where it “recognizably deriv[es] from” its source material (as the Second Circuit has held).

PARTIES TO THE PROCEEDINGS BELOW

Petitioner The Andy Warhol Foundation for the Visual Arts, Inc. was a plaintiff-counter-defendant-appellee in the U.S. Court of Appeals for the Second Circuit.

Respondents Lynn Goldsmith and Lynn Goldsmith, Ltd. were defendants-counter-plaintiffs-appellants in the U.S. Court of Appeals for the Second Circuit.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner The Andy Warhol Foundation for the Visual Arts, Inc. has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

RELATED PROCEEDINGS

The proceedings directly related to this case are:

Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, No. 19-2420, U.S. Court of Appeals for the Second Circuit. Amended judgment entered on August 24, 2021. Petition for rehearing en banc denied on September 10, 2021.

Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith, No. 1:7-cv-02532-JGK, U.S. District Court for the Southern District of New York. Judgment entered July 15, 2019. Notice of appeal filed August 7, 2019.

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