

**21-869 ANDY WARHOL FOUNDATION FOR THE VISUAL ARTS, INC. V. GOLDSMITH**

DECISION BELOW: 11 F.4th 26

LOWER COURT CASE NUMBER: 19-2420

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 8. 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).

CERT. GRANTED 3/28/2022