Team 001

NO. 24-CV-1982

IN THE

SUPREME COURT OF THE UNITED STATES

MARCH TERM 2025

MONTDEL UNITED,

Petitioner,

v.

STATE OF DELMONT and

DELMONT NATURAL RESCOURCES AGENCY

Respondent.

On Writ of Certiorari to the

United States Court of Appeals

for the Fifteenth Circuit

BRIEF FOR PETITIONER

Attorneys for Petitioner

QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that the State of Delmont Energy and Conservation Independence Act ("ECIA") and Respondents' subsequent transfer of Red Rock was not a violation of Montdel United's First Amendment free exercise rights.

II. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that the ECIA and Respondents' subsequent transfer of Red Rock was not a violation of Montdel United's First Amendment right to free speech.

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The opinion of the United States District Court for the District of Delmont is unpublished and may be found at *Montdel United v. State of Delmont and Delmont Natural Resources Agency*, C.A. No. 24-CV-1982 (D. Delmont March 1, 2024). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *Montdel United v. State of Delmont and Delmont Natural Resources Agency*, C.A. No. 24-CV-1982 (15th Cir. 2024).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on this matter. R. at 45. Petitioner then filed a writ of certiorari, which this Court granted. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(l).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment to the United States Constitution. U.S. Const. amend. I.

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

Red Rock & the Montdel People. The Montdel People are an indigenous Native American group whose residence in what is now the State of Delmont can be traced back thousands of years R. at 2. Throughout their recorded history, the Montdel people have held rituals four times a year at a landmark called Red Rock in what is now Painted Bluffs State Park. R. at 2-3. These rituals consist of group prayers and crop sacrifices. R. at 3. The Montdel people believe cessation of these rituals would bring about their creator's wrath and that they are the only way to commune with their god. R. at 3.

Delmont Statehood & Founding Painted Bluffs. Delmont was established as a state in 1855. R. at 4. At this time, the Montdel people continued their rituals at Red Rock informally. R. at 4. In 1930 Delmont acquired the land through eminent domain, naming it Painted Bluffs Park. R. at 4. The Montdel people continued to perform their religious ceremonies at Red Rock in a pro forma manner. R. at 4. The park offers a variety of outdoor activities, and the State of Delmont ("Delmont") has utilized references to the Montdel religious practices in promoting the park since its inception. R. at 4. The Governor of Delmont has previously acknowledged the lasting heritage of the Montdel people calling the rituals a "part of a legacy that the state proudly cherishes." R. at 4-5.

Formalization of Montdel Observance. In 1950, a deliberate initiative was undertaken by Delmont residents James and Martha Highcliffe to formalize the Red Rock religious practices as the "Montdel Observance." R. at 5. The Highcliffes recruited members, reinitiated formal pilgrimages to Red Rock, and established an administrative framework for the religious group. R. at 5. Since 1952, the "Montdel Observance" has been conducted as a formal ritual, continuing the historic practices. R. at 5. Participants in the Montdel Observance rituals have come to be known as the "Old Observers," and over the years the rituals have evolved into a festival-like event and draw sizeable crowds. R. at 5. The festivals offer a variety of recreational activities and the Montdel observers have never objected to the festival goers. R. at 6. For the past twenty years, in response to the festival's growing popularity Delmont has issued vendors' licenses for food, music, and merchandise. R. at 6.

The Creation of Montdel United and the ECIA. Twenty years ago, massive lithium deposits were found under Painted Bluffs State Park, particularly around the Red Rock area. R. at 7. Since then, Mining companies have sought rights to the deposit and the State has previously

considered—unsuccessfully—multiple pieces of legislation seeking to transfer the property. R. at 7. In 2016, the non-profit organization Montdel United was formed to oppose the mining companies' persistent efforts to secure rights to Painted Bluffs. R. at 7. Then, three years ago, the government of Delmont initiated an agenda aimed at promoting the mining of lithium, nickel, iron, and copper. R. at 6-7. To this end, Delmont enacted the Energy and Conservation Independence Act (the "ECIA") which authorized the State to enter into land transfer agreements with private mining companies for the extraction of these minerals. R. at 6. Under the ECIA, the transfers are managed by the Delmont Natural Resources Agency (the "DNRA") and require environmental studies to be done before the transfers are completed. R. at 6-7. The State has previously withdrawn from two similar transfers due to expected environmental damage. R. at 9-10

Transfer of Red Rock and Subsequent Lawsuit. In January 2023, under the ECIA, the DNRA executed an agreement Red Rock and some surrounding land, to Delmont Mining Company ("DMC) for lithium extraction. R. at 8. Immediately following the transfer, the area will be accessible only to DMC and its employees. R. at 9. Additionally, it is undisputed that the mining operations by Delmont Mining Company will result in the complete destruction of Red Rock, rendering it unusable forever. R. at 8, 48. Leaders of the Montdel Observance have opposed this plan vigorously and met with the State Natural Resources Agency, Secretary Alex Greenfield to voice their concerns. R. at 52-53. Their concerns were ultimately rebuffed. R. at 53.

II. PROCEDURAL HISTORY

The District Court. Petitioner, Monted United, sued Respondents State of Delmont and Delmont Natural Resources Agency in the United States District Court for the District of Delmont, seeking a temporary restraining order and preliminary on the basis that the transfer of Red Rock violated their free exercise and free speech rights under the First Amendment. R. at 10. The

temporary restraining order was denied, and a hearing was held to determine whether a preliminary injunction should be granted. R. at 10. On March 1, 2024, the district court granted injunctive relief for Montdel United. R. at 32.

The Court of Appeals. On November 1, 2024, the Fifteenth Circuit reversed the district court's free speech and free exercise judgment in favor of Respondent. R. at 45. The circuit court found that the district court erred in holding that the transfer of Red Rock was subject to strict scrutiny, holding the transfer was not a coercive prohibition of free exercise rights. R. at 45. Additionally, the circuit court reversed the district court's holding that Red Rock is a public forum and determined the State's actions were reasonable. R. at 42.

This Court. On January 5, 2025, Petitioner Montdel United appealed the ruling of the Fifteenth Circuit. R. at 54. This Court granted certiorari over two issues: (1) whether the ECIA and Respondent's subsequent transfer of Red Rock violate the First Amendment right to free exercise of religion and (2) whether the ECIA and Respondent's subsequent transfer of Red Rock violate the First Amendment right to free speech. R. at 54.

SUMMARY OF THE ARGUMENT

I.

The United States Court of Appeals for the Fifteenth Circuit erred in holding that the transfer of Red Rock area did not violate the Free Exercise clause of the First Amendment. To avoid strict scrutiny review, Delmont must show its transfer is neutral and generally applicable. It fails. The transfer of Red Rock is not neutral because it targets the Montdel People for distinctive treatment. It is not generally applicable because it targets one piece of land for transfer and prohibits religious conduct while making secular exceptions in similar circumstances. Therefore, it is subject to and fails strict scrutiny review. Even if this Court determines Delmont's transfer of Red Rock is neutral

and generally applicable, the action is still subject to strict scrutiny because Montdel United has asserted a valid hybrid claim.

Additionally, this Court should decline to follow *Lyng* because it is factually distinguishable and flawed case law. The transfer of Red Rock would eliminate the Montdel people's ability to perform religious practices, and not merely burden them. Additionally, if the Court finds the Fifteenth Circuit's analysis is correct, the *Lyng* coercion analysis too narrowly tailors the free exercise clause, and the Court should revisit its decision.

II.

The United States Court of Appeals for the Fifteenth Circuit erred in holding that the transfer of Red Rock did not violate the Free Speech clause of the First Amendment. Red Rock is a public forum under the First Amendment due to its status as a public park, history of expressive activity, and the Delmont's active endorsement of the Montdel Observance. Therefore, Delmont may only impose reasonable restrictions on the time, place, or manner of protected speech. Delmont's transfer of Red Rock fails to meet this standard, because it is not narrowly tailored to serve its stated interests of fixing the global climate crisis, economic growth, or complying with federal law. Additionally, the transfer fails to leave open alternative channels for the Montdel people to conduct their religious practices. However, even if this Court determines Red Rock is a nonpublic forum Delmont's actions are unreasonable and therefore violate the First Amendment.

ARGUMENT AND AUTHORITIES

Standard of Review. This case comes as an interlocutory appeal of a preliminary injunction. 28 U.S.C. § 1254(1); see also Fed. R. Civ. P. 65(a). Therefore, the Court reviews the District Court's legal rulings de novo, and its ultimate conclusion for abuse of discretion. *McCreary Cnty., Ky. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 867 (2005). When considering a preliminary

injunction "a district court must consider whether the plaintiffs have demonstrated that they are likely to prevail on the merits." *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). Because only the likelihood of success on the merits factor was preserved for appeal, we address only that factor.

I. THE FIFTEENTH CIRCUIT ERRED IN HOLDING DELMONT'S TRANSFER OF RED ROCK WOULD NOT VIOLATE MONTDEL UNITED'S RIGHT TO FREE EXERCISE OF RELIGION.

The transfer of Red Rock under the ECIA violates the free exercise clause of the First Amendment because it is not neutral or generally applicable. Consequently, it fails under strict scrutiny. Additionally, Montdel United has asserted a hybrid claim requiring strict scrutiny analysis. Lastly, the Fifteenth Circuit's application of *Lyng* is misguided because the tribe in that case did not face total ban of their religious practices and its coercion standard is too strict.

The Free Exercise Clause of the First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise" of religion and it applies to the states through the Fourteenth Amendment. U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). It was historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause of the First Amendment. *Bowen v. Roy*, 476 U.S. 693, 703 (1986). "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 532 (1993). Discrimination which violates the Free Exercise Clause is present here.

A. Delmont's Transfer of Red Rock is Not a Neutral or Generally Applicable Government Action.

The transfer of Red Rock is not neutral or generally applicable because it unequally targets the religious practices of the Montdel people. Government action burdening religion is protected

from strict scrutiny if it constitutes a "[v]alid and neutral law of general applicability…." *Empl. Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990). Montdel United's success on one element weighs heavily on general applicability. "Neutrality and general applicability are interrelated, failure to satisfy one requirement is a likely indication that the other has not been satisfied. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 531. If the law does not comply it is subject to strict scrutiny review. *Id.* at 546.

1. Delmont's transfer of Red Rock is not a neutral action.

Regardless of the ECIA's facial neutrality, Delmont's transfer of Red Rock is not neutral because it targets the Montdel people for distinctive treatment. The neutrality analysis does not end with the text of the laws at issue. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 534. "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.* "Apart from the text, the effect of a law in its real operation is strong evidence of its object." *Id.* at 535.

This Court has previously found facially neutral government action to not be neutral when it is too targeted. In *Church of Lukumi Babalue Aye, Inc. v. City of Hialeah* this Court held facially neutral city ordinances restricting the killing of animals were not neutral because they accomplished a "religious gerrymander" and because the ordinances suppressed much more religious conduct than was necessary to achieve the city's legitimate ends. *Id.* at 535, 542. The Montdel people find themselves in the same situation.

First, the transfer achieves a religious gerrymander because a relocation of the Montdel Observance is inadequate. This case mirrors the attempt to ban animal sacrifice in *Lukumi* because it presumes the possible continuation of religious practices without a vital component. The

affidavit of DNRA Secretary Alex Greenfield proposes relocating the rituals five miles down the river. R. at 48. However, this is not a solution to the issues of the Montdel people because Red Rock is the only site where they can commune with their god. R. at 3. As demonstrated by Alex Greenfield's sworn statement, Delmont plans to gerrymander the Montdel people's religious practices with no viable alternative. This is analogous to the "religious gerrymander" under *Lukumi*. The transfer of Red Rock is not neutral in its effect.

The land transfer also suppresses much more religious conduct than is necessary to achieve Delmont's legitimate ends by prohibiting access to the area where the Montdel people's observances take place. Delmont transferred Red Rock even though there were other mining options in the area which did not burden religion—as evidenced by the now cancelled Granite International and McBride Mining projects. R. at 9-10. Delmont halted these operations because of the presence of endangered species and a 35% possibility of contaminating the water source of a 50-person community. R. at 9-10. The obliteration of the only area the Montdel People can pray to their god is just as important as these other concerns. In fact, the destruction of Red Rock is worse because the result is assured, unlike the previous impediments.

Delmont also has a mineral rich geology with substantial reserves of copper, iron, nickel, and other minerals, distributed across various regions across the state. R. at 9. Instead of pursuing these alternatives, the State has instead opted to destroy Red Rock despite its importance to the Montdel People. Delmont's interests in economic growth, federal compliance, and solving the global climate crisis can be served by the other deposits, in areas where religious exercise is not an issue. R. at 9-10. Like *Lukumi* these means do not justify the ends.

Therefore, the transfer of Red Rock is not neutral and strict scrutiny applies. While not wholly determinative, the failure of neutrality indicates the transfer is not generally applicable. *See Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 531.

2. Delmont's transfer of Red Rock is not a generally applicable action.

The transfer of Red Rock is not generally applicable because it targets one piece of land for transfer and prohibits religious conduct while making secular exceptions in similar circumstances.

First, the transfer of Red Rock targets one piece of land and therefore by definition cannot be generally applicable. This Court has held in other areas—most notably in tax cases—that government actions which are too targeted violate general applicability under the First Amendment. *See e.g.*, *Minn. Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 581 (1983) (holding that tax that applied only to certain publications was not "generally applicable"). Additionally, the First Circuit has applied this same logic to religious property in *Roman Catholic Bishop of Springfield v. City of Springfield* on the basis that the regulation only targeted a "particular property". *Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 98 (1st Cir. 2013). In *City of Springfield*, the targeting of a single church with an ordinance was determined to be not generally applicable. *Id.* This is a sound application of precedent, and this Court should follow suit.

We ask that the Court apply the same doctrine under these similar facts. In *Minnesota Star & Tribune Company v. Minnesota Commissioner of Revenue* this Court held that taxes which were applied to only some publications were too targeted to be generally applicable. *Minn. Star & Tribune Co.*, 460 U.S. at 581. The taxes in *Minnesota Star & Tribune Company* mirror the transfer of Red Rock because it only applies to one site.

Red Rock is the only place the Montdel people can practice their observances. R. at 3, 9. Red Rock is the focal point of the DMC's mining operations and is the primary location of the lithium deposit. R. at 47. Red Rock will be completely obliterated after the transfer, never to be reclaimed. R. at 8. Delmont's actions are particular to Red Rock because it will be forever destroyed, unlike the surrounding land which could be reclaimed. R. at 8. Therefore, the transfer of the land is too particularized to the Montdel people's place of worship.

Second, the transfer of Red Rock cannot be generally applicable because it prohibits religious conduct while making secular exceptions in similar circumstances. A law lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way. *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 534 (2021). The facts of the current case are once again similar to *Church of Lukumi Babalu Aye, Inc. v. Hialeah*. In *Lukumi*, the City of Hialeah adopted several ordinances prohibiting animal sacrifice, a practice of the Santeria faith, and claimed that the ordinances were necessary in part to protect public health. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 524-528, 544–45. However, because the ordinances did not regulate similar hazards like hunters' disposal of their kills or improper garbage disposal by restaurants this Court concluded that this and other forms of under inclusiveness meant that the ordinances were not generally applicable. *Id.* at 520, 544–45.

Analogous facts are present here. Within the past five years, the State of Delmont has entered into, but withdrawn from, land transfer agreements involving two other mining companies, Granite International, Inc and McBride Brine Mining, Inc. R. at 9-10. The transfer to Granite International was canceled when the environmental impact statement revealed that the process would destroy the habitat of two endangered species. R. at 9-10. The McBride operation was shuttered after the Citizens of Grove Flat protested the transfer when the environmental impact statement revealed a

35% possibility of contaminating their water supply. R. at 9-10. The size of the Red Rock lithium deposits are irrelevant—Delmont made exceptions. Also, just because Delmont ignored protests to an iron extraction which destroyed a museum is also irrelevant because iron is not energy-related like lithium. R. at 10. Delmont's interests are therefore different, so the exceptions are not analogous. Delmont has withdrawn from transfer agreements due to secular objections and has now ignored religious objections. The transfer of Red Rock is not generally applicable.

B. Strict Scrutiny Review Demands Reversal.

The State of Delmont's actions fail under strict scrutiny review. A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Fulton*, 593 U.S. at 541 (citing *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 546). "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541. Strict scrutiny is the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

Delmont has put forth two interests it argues are compelling enough to survive strict scrutiny, reducing dependence on fossil fuels to solve the climate crisis, and federal compliance for defense contracts. R. at 9, 30. Neither interest survives strict scrutiny. Strict scrutiny requires a precise analysis and interests cannot be stated at a high level of generality. *Fulton*, 593 U.S. at 541. Rather than rely on broadly formulated interests, courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Id.* (citing *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430–432 (2006).

The relevant question is whether there is a compelling state interest in transferring Red Rock even with the existential burden on the religious exercise of the Montdel Observance. Under *Fulton*, Delmont cannot meet this burden for either interest.

Neither interest can be of the highest order because they are broadly formulated. The climate crisis cannot be an interest of the highest order because mining lithium at Red Rock will do little to solve the staggeringly expansive global climate crisis. It is impossible for Delmont to make this interest more specific because it is impossible to address a goal so vast.

Delmont's climate interest also fails because it cannot show why Red Rock must be mined as opposed to other sites. "A law cannot be regarded as protecting an interest of the highest order when it leaves appreciable damage to that supposedly vital interest unprohibited." *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 547. The State is mineral rich and has other resources to draw from to serve their goals as evidenced by their previous operations. R. at 6, 9-10. *Fulton* requires the government to use other means available to them if possible. *Fulton*, 593 U.S. at 541.

The State's interest in federal compliance fails for the same reason, it cannot demonstrate why it requires the destruction of Red Rock. As previously discussed, Delmont could pursue these interests through other means. Other deposits are available, which are not located at Red Rock and do not require the obliteration of a religious site. R. at 9-10. The State is rich in resources. R. at 6. Delmont must pursue other means.

To succeed under strict scrutiny, Delmont must meet a very high bar which under these facts is out of reach. "Only the gravest abuses, endangering paramount interest, give occasion for permissible limitation." *Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (referring to the necessary circumstances to permit limitations on speech). To establish that it has a compelling interest sufficient to override the Montdel free exercise claim, Delmont would have to show that it would commit one of 'the gravest abuses' of its responsibilities if it did not transfer Red Rock. Red Rock is an irreplaceable religious site and Delmont's interests would not be solved by its destruction. Delmont's transfer of Red Rock cannot survive under strict scrutiny.

C. Even if the Court Finds the Transfer of Red Rock is Neutral and Generally Applicable, Montdel United has Asserted a Valid Hybrid Claim and Therefore Strict Scrutiny is Required.

Because the transfer of Red Rock Montdel United has asserted a valid hybrid claim under *Smith* the transfer of Red Rock is barred. In *Empl. Div., Dept. of Human Resources of Oregon v. Smith* this Court held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action when the Free Exercise Clause is violated in conjunction with other constitutional protections, namely freedom of speech or the press. *Smith*, 494 U.S. at 881.

Smith identified multiple cases where the Court invalidated regulations which infringed on free exercise of religion and free speech. *Id.* at 881 (citing *Cantwell*, 310 U.S. at 304-07 (invalidating a licensing system for religious and charitable solicitations); *Murdock v. Com. of Pennsylvania*, 319 U.S. 105, 115 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); *Follett v. Town of McCormick*, S.C., 321 U.S. 573, 581–82 (1944) (same). This situation is no different because they infringe on speech and religious exercise.

These facts necessitate the standard described in *Smith*. The Montdel Observance is the only means through which the Montdel people can communicate with their deity and engage in numerous expressive activities on the site. R. at 3. This is a clear invocation of the "hybrid claim" standard. Therefore, this Court should bar the transfer of Red Rock under strict scrutiny for the same reasons as discussed above.

D. The Fifteenth Circuit's reliance on *Lyng* is misguided.

The Fifteenth Circuit's reliance on *Lyng v. Northwest Indian Cemetery Protective Association* is misguided because it is factually distinguishable and flawed case law. In their

decision, the Fifteenth Circuit held the facts in *Lyng* analogous to the current case, finding the coercion requirement in *Lyng* was not present, and bypassed strict scrutiny. R. at 43-44.

1. *Lyng* is factually distinguishable.

Lyng should not control the outcome of this case because it was decided under different facts. In *Lyng*, the government addressed the United States Forest Services' plans to build a paved road through federal land which included the Chimney Rock area of the Six Rivers National Forest. *Lyng v. N.W. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 439 (1988). The Court hinged its decision on the fact that that the road was "removed as far as possible from [religious] sites," and "[n]o sites where specific rituals take place were to be disturbed." *Id.* at 443, 454. In *Lyng* this Court clearly defined this distinction stating, "The Constitution does not permit government to discriminate against religions that treat particular physical sites as sacred, and a law prohibiting the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions. *Id.* at 453. However, prohibiting the Montdel people from visiting Red Rock is exactly what Delmont's land transfer would do.

Lyng is inapposite. The Plaintiffs in *Lyng* argued that the road would create distractions which would impede their ability to practice their religion. *Id.* at 448. Their concerns are not analogous to the situation facing the Montdel People because they did not face a complete prohibition on worship. Destruction of Red Rock is not a distraction for the Montdel Observance, it's the end of the practice altogether. Red Rock is sacred to the Montdel People, and is an irreplaceable site critical to their beliefs. R. at 3. It is undisputed that Red Rock will be destroyed and that access will be prohibited once mining operations begin. R. at 8. Red Rock will never be reclaimed. R. at 8. The same cannot be said for the sites in *Lyng* rendering it inapplicable.

2. If the Fifteenth Circuit's coercion analysis is correct, this Court should revisit their decision in *Lyng*.

If the Fifteenth Circuit's application of *Lyng* is correct, then it has too narrowly construed the First Amendment, and this Court should revisit their previous decision. In the case before this Court, Delmont is actively pursuing the obliteration of a sacred religious site which will end the religious practices of the Montdel people forever. Their decision would create an even narrower test for free exercise, requiring government action to be not neutral and generally under *Smith* and then meet the additional requirement of coercion under *Lyng*. *Smith* has previously been criticized by members of this Court as contrary to the Constitution's text, structure, original public meaning, and longstanding precedent. *Fulton*, 593 U.S. at 543 (Barrett, J., joined by Kavanaugh, J., concurring); *id.* at 555-594 (Alito, J., joined by Thomas and Gorsuch, JJ., concurring in judgment). If *Lyng* is extended, these criticisms will only increase. While *Smith* may be flawed, the Fifteenth Circuit's interpretation is blatantly unconstitutional.

II. THE FIFTEENTH CIRCUIT ERRED IN HOLDING DELMONT'S TRANSFER OF RED ROCK WOULD NOT VIOLATE MONTDEL UNITED'S RIGHT TO FREE SPEECH.

This Court should reverse the Fifteenth Circuit's ruling that the transfer of Red Rock under the ECIA would not violate the free speech rights of Montdel United. Delmont's actions violate free speech under every forum analysis. Delmont's transfer of Red Rock is a content-neutral regulation of free speech in a public forum and is therefore subject to the time, place, and manner test. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983). Alternatively, if this Court holds Red Rock is a designated public forum, the transfer still violates the First Amendment under the same test. *Perry Educ. Ass'n.*, 460 U.S. at 45. Even in the unlikely event

that this Court finds Red Rock is a nonpublic forum, Montdel United's claims still succeed because Delmont's actions are unreasonable. *Forbes*, 523 U.S. at 667.

The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech...,"and applies to the states through the Fourteenth Amendment. U.S. Const. amend. I; *Cantwell*, 310 U.S. at 303. The existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differently depending on the character of the property at issue. *Perry Educ. Ass'n*, 460 U.S. at 44. The Court has identified three types of fora: the traditional public forum, the public forum created by government designation, and the nonpublic forum. *Forbes*, 523 U.S. at 667. Delmont's actions violate the First Amendment under every standard.

A. Red Rock is a Traditional Public Forum and Therefore Delmont May Only Impose Reasonable Time, Place, and Manner Restrictions on Speech.

Red Rock is a traditional public forum under the First Amendment because of its character as a public park and its traditional role as a place of expressive activity. Therefore, Delmont may only impose reasonable time, place, and manner restrictions on speech. Traditional public fora are those places which "by long tradition or by government fiat have been devoted to assembly and debate." *Cornelius v. NAACP Leg. Def. and Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985) (quoting *Perry Educ. Ass'n.*, 460 U.S. at 45). "Public streets and parks fall into this category." *Id. (*citing *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939)). In traditional public forums when speech is content-neutral the government may only enact time, place, and manner restrictions on expression which are (1) content-neutral, are (2) narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels of communication. *See Perry*

Educ. Ass'n, 460 U.S. at 45. We defer to the district Court's holding that the transfer is content-neutral, pursuant to this Court's precedent. *See Frisby v. Schultz,* 487 U.S. 474, 482 (1988).

This Court has long recognized a presumption that public parks like Painted Bluffs—and more specifically Red Rock—are traditional public forums protected by the First Amendment. "[P]ublic places historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be public forums." *U.S. v. Grace*, 461 U.S. 171, 177 (1983). "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague,* 307 U.S. at 515. Red Rock's status as a state park creates a presumption that it is a traditional public forum.

In addition to the presumption, Red Rock has been historically associated with expressive activities and embodies the character of a traditional public forum. The Montdel people's religious practices at Painted Bluffs have been traced back to 400 AD. R. at 2. They have performed complex community rituals at Red Rock for thousands of years, assembling and communication with their god together. R. at 2-3. Furthermore, the rituals at the site continued through Delmont's induction as a state in 1855 and have remained active through Delmont's acquisition of the area and subsequent creation of Painted Bluffs Park. R. at 2-3. Today, Montdel Observance is still held in conjunction with a festival that attracts numerous participants. R. at 5. Red Rock is a forum historically associated with the assembly and worship of the Montdel people.

Even for people who are not Montdel, Painted Bluffs Park is a place for assembly and communication. Many non-observers take part in numerous expressive events including dances, stargazing, singing, crafts, art displays, and speeches at Red Rock during the observance festivals.

R. at 6. Additionally, the park has several non-festival related activities for park goers like camping, hiking, and fishing along the Delmont River. R. at 4. These are all expressive activities denoting a public forum. Red Rock is a traditional public forum in both character and presumption.

1. Delmont's transfer of Red Rock is not narrowly tailored to serve a compelling government interest.

Delmont's transfer of Red Rock is not narrowly tailored to serve their stated interests to solve the global climate crisis, grow the economy, and comply with federal law. To satisfy the narrow tailoring requirement, the regulation at issue must promote a substantial governmental interest that would be achieved less effectively absent the regulation, and the means chosen must not be substantially broader than necessary to achieve that interest. *See Ward v. Rock Against Racism*, 491 U.S. 781, 782–83 (1989). Delmont fails under this prong because it renders Red Rock inaccessible to the Montdel people forever. R. at 8. The result is a complete ban on expressive activity at Red Rock.

Historically, this Court has placed a high bar on complete bans of expressive activity. The DMC's exclusion of the Montdel people constitutes such a ban. R. at 8. A statute is narrowly tailored if it targets and eliminates no more than the exact source of the evil it seeks to remedy. *Frisby*, 487 U.S. at 485. "A complete ban can be narrowly tailored, but only if each activity within the proscription's scope is an appropriately targeted evil." *Id.* This Court has previously struck down complete bans on expressive activity that are too broad in scope. *See e.g.*, *Murdock*, 319 U.S. at 117 (invalidating a complete ban on solicitation in residential areas); *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 164-165 (1939) (hand billing); *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 147–48 (1943) (door-to-door solicitation); Cf. *Perry Educ. Ass'n*, 460 U.S. at 45. (in a traditional public forum, "the government may not prohibit all communicative

activity"). The transfer of Red Rock would completely ban the use of the site for the Montdel people without an interest of corresponding scope.

Delmont's ends do not justify their means. Previous decisions allowed bans only where the substantive evil to be prevented is not merely a possible by-product of the activity, but created by the medium of expression itself. *See e.g.*, *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984); *Frisby*, 487 U.S. at 486. In *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, the Court only allowed all signs on public property to be banned because the city's interest in supporting the regulation, an esthetic interest in avoiding visual clutter and blight, rendered each sign an evil. *Taxpayers for Vincent*, 466 U.S. at 810. There is no analogous evil in the case before you.

The complete destruction of Red Rock does not narrowly serve Delmont's stated interests of fixing the global climate crisis, economic growth, or complying with federal law. R. at 9. As demonstrated by this Court's past decisions, the mediums and methods must match. The Montdel people's rituals at Red Rock are not endemic to the issues cited by the State. Following *Taxpayers for Vincent*, this alone should be enough for Delmont to lose on this element.

However, there are additional problems with each of Delmont's interests. First, Delmont's interest in fixing the global climate crisis is not served by the complete destruction of Red Rock. While the lithium deposits under the site are no doubt sizeable, they pale in comparison to the scale of the world's climate crisis. R. at 7. It is doubtful that mining the deposits under Red Rock would even put a dent in the crisis. The complete destruction of Red Rock and prohibition of worship is not tailored to this monumental interest.

Second, Delmont's interest in promoting economic growth is not narrowly served by the destruction of Red Rock. Delmont's previous plans show that the existence of endangered species

and a 35% chance of contaminating a 50-person community's water supply were compelling enough interests to halt the previous Granite International and McBride Mining land transfers. R. at 9-10. By that logic, the complete obliteration of the Montdel people's irreplaceable sacred place of worship should be more than enough reason to halt Delmont's current plans.

The DNRA's arguments that the Red Rock project is larger and that they previously went forward with another land transfer with Granite International despite the destruction of a museum are irrelevant. R. at 10. The destruction of Red Rock is a larger impact just as Red Rock is a larger project. The destruction of a small museum that can be relocated is not analogous to the obliteration of a culture's only means of communicating with their god. In fact, it is unlikely that any interest would justify such an act. The destruction of Red Rock is too great to be narrowly tailored to serve the interest of economic growth no matter the size of the lithium deposit it sits on.

Lastly, Delmont's interest in complying with federal law is not narrowly served by the transfer and destruction of Red Rock. There is no federal mandate requiring Delmont mine lithium at Red Rock. The federal government only requires that Delmont use and develop ion batteries. R. at 9. The state cancelled mining projects which could have served this purpose where the costs of mining were less destructive than the loss of Red Rock. R. at 9-10. Additionally, it is undisputed that Delmont is mineral rich with deposits of minerals distributed across various regions. R. at 6. Delmont does not need to mine lithium at a sacred religious site. Therefore, the transfer of Red Rock does not narrowly conform to Delmont's interest in compliance with federal laws.

2. Delmont's transfer of Red Rock fails to leave open ample alternative channels for communication.

Delmont's transfer of Red Rock fails to leave open ample alternative channels of communication because Red Rock has irreplaceable significance to the Montdel people. In

traditional public forums, the government may only enact time, place, and manner restrictions on expression which… (3) leave open ample alternative channels of communication. *See Perry Educ. Ass'n*, 460 U.S. at 45. "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 556 (1975) (quoting *Schneider*, 308 U.S., at 163). The transfer of Red Rock will leave no alternative channel for the Montdel People.

This Court's previous conclusions regarding the "ample alternative" element have hinged on whether complete access to the forum was denied. *See Ward*, 491 U.S. at 802 (access to bandshell was still allowed); *Heffron v. Intl. Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 654-655 (1981) (broad access to fairgrounds still allowed); *Frisby*, 487 U.S. at 483-484 (access to neighborhoods was still allowed); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 54 (1986)(additional land existed to build theaters). No such access exists here.

Here, Red Rock and the religious rites practiced there four times a year are the only means by which the Montdel people can communicate with their god. R. at 3. Their religious doctrine explicitly prohibits individual prayer. R. at 3. Additionally, they believe that non-performance of these rituals would incur their creator's wrath. R. at 3. Delmont's actions would obliterate Red Rock and prohibit access to an area where these rituals have taken place for thousands of years. The Montdel people have no alternative means of communicating with their god under this plan.

Relocation is not a viable alternative. Requiring the Montdel people to practice their traditions five miles down the river does not remedy the issue. R. at 8. As already stated, the Montdel people believe they can only commune with their god at Red Rock. R. at 3. Their traditions are inextricably linked to the location on which Delmont would like to conduct its

operation. Conducting the rituals elsewhere would have no religious meaning to the Montdel people and therefore does not constitute an alternative channel.

B. Even if This Court Finds Red Rock is Not a Traditional Public Forum, Delmont's Actions Have Created a Designated Public Forum and Therefore Fail Under the Same Analysis.

Even if this Court determines the park is not a traditional forum, Delmont's endorsements and support of the "Montdel Observance" has created a designated public forum which is protected under time, place, and manner review. "A second category consists of public property which the state has opened for use by the public as a place for expressive activity. The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place." *Perry Educ. Ass'n*, 460 U.S. at 45 (citing *Widmar v. Vincent*, 454 U.S. 263, 273 (1981) (university meeting facilities); *City of Madison Joint School District v. Wisconsin Public Employment Relations Comm'n*, 429 U.S. 167, 174-176 (1976) (school board meeting); *Conrad*, 420 U.S. at 555 (municipal theater).

Regulation of such property is subject to the same limitations as that governing a traditional public forum. *Intl. Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992). "To create a forum of this type, the government must intend to make the property 'generally available' to a class of speakers." *Forbes*, 523 U.S. at 678 (quoting *Widmar*, 454 U.S. at 264). Delmont has made Red Rock *generally available* for the Montdel Observers religious practices.

This Court has recognized fairs and similar events as public forums. In *Heffron v. International Soc. For Krishna Consciousness, Inc* this court determined that the Minnesota State Fair was a "limited public forum" because it provided "a means for a "great number of exhibitors temporarily to present their products or views, be they commercial, religious, or political, to a large

number of people in an efficient fashion". *Heffron*, 452 U.S. at 655.[1] Specifically, the Court relied on the number of attendees and the market-like character of the event in reaching their conclusion that the fair was a designated forum. The Montdel Observance is analogous. It has taken on the character of a festival and for the last twenty years has included numerous vendors on-site like those in *Heffron* R. at 6. It additionally attracts thousands of attendees from all over the state and beyond. Red Rock's role as a public forum is clear under *Heffron*. R. at 15.

The use of Red Rock has also long been endorsed and facilitated by the state of Delmont. Delmont has benefited from the Montdel people. Delmont has used the Montdel people's rituals to market Painted Bluffs Park since its inception. R. at 4. Delmont Governor Rupert Ridgeway publicly acknowledged by executive proclamation the lasting heritage of the Montdel people at the opening of the park stating that the Montdel people were, "part of the land for centuries before there was ever a thought of such a thing as Delmont or even America," going on to proclaim that "their supplications to the Almighty in the Painted Bluffs are part of a legacy that the state proudly cherishes." R. at 4-5. Unprompted, Delmont has opened a forum for the Montdel people.

The same trend continues today. The observances have since morphed into festivals which draw visitors to the park. For two decades, the State of Delmont has issued vendors' licenses for food, music, and merchandise through the Park Service to facilitate the growth and popularity of these festivals. R. at 6. Delmont has benefited from, facilitated, and endorsed the Montdel people's rituals at Red Rock, opening the venue for their speech. Delmont has created a textbook designated public forum at Red Rock for the Montdel people, they cannot exclude them.

[1] The Court in *Heffron* uses the term "limited forum" interchangeably with designated forum and applies the time, place, and manner test reserved for public forums in reaching their conclusion. (*Heffron*, 452 U.S. at 654; *see also Lee*, 505 U.S. at 678 (stating that designated public forum, whether of a "limited or unlimited character" is subject to same protections as traditional public forum).

C. Even if the Court Finds Red Rock is a Nonpublic Forum, Delmont's Actions are Still Unreasonable and Therefore Violate the First Amendment.

The transfer and destruction of Red Rock is unreasonable and fails under even the most limited scrutiny. Restrictions on nonpublic forums need only be "reasonable in light of the purpose which the forum at issue serves." *Perry Educ. Ass'n*, 460 U.S. at 49. When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions. *U.S. v. Playboy Ent. Group, Inc.*, 529 U.S. 803, 804 (2000). Even in limited public and nonpublic forums, the First Amendment protections still exist. *See, e.g.*, *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns*, 453 U.S. 114, 131 n.7 (1981).

Even under nonpublic forum analysis, the facts before the Court are so egregious they necessitate a finding of unreasonableness. Delmont's actions would obliterate Red Rock. R. at 8. There is no substitute for the site and its destruction would be cataclysmic to their entire belief system. R. at 3. Such action would constitute a complete ban on the Montdel People's ability to practice their faith forever. Delmont's destruction of the site is unreasonable, and the state cannot show that such an action would be reasonable regardless of Delmont's interests.

CONCLUSION

This Court should REVERSE the judgment of the United States Court of Appeals for the Fifteenth Circuit. The state of Delmont's transfer of Red Rock violates Montdel United's First Amendment rights to freely exercise their religion and freedom of speech.

Respectfully submitted,

Team 001

ATTORNEYS FOR PETITIONER

APPENDIX A

Constitutional Provisions

U.S. Const. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the 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.

Statutory Provisions

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . .

BRIEF CERTIFICATE

Team 001 certifies that the work product contained in all copies of Team 0001's brief is in fact the work product of the members of Team 001 only; and that Team 001 has complied fully with its law school's governing honor code; and that Team 001 has complied with all Competition Rules.

Team 001

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