In The

Supreme Court of the United States

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MONTDEL UNITED *Petitioner*,

v.

STATE OF DELMONT and DELMONT NATURAL RESOURCES AGENCY,

Respondent.

_____

Writ of Certiorari to the
United States Court of Appeals
for the Fifteenth Circuit

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CERTIORARI GRANTED

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The Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifteenth Circuit is **GRANTED** with respect to the following questions:

1. Does the ECIA and subsequent transfer of Red Rock violate the First Amendment Free Exercise rights of Montel United?
2. Does the ECIA and subsequent transfer of Red Rock violate the First Amendment Free Speech rights of Montel United?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Cases- Continued

Statutes

Constitutional Provisions

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Whether the State of Delmont's transfer of Red Rock for lithium mining pursuant to the Energy and Conservation Independence Act violates the Free Speech Clause of the First Amendment, when the transfer is a content neutral regulation of government owned land that is not used for civic discourse, the State of Delmont has a significant interest in economic revitalization and environmental sustainability, and the means do not burden more speech than necessary.

II. Whether the State of Delmont's transfer of Red Rock for lithium mining pursuant to the Energy and Conservation Independence Act violates the Free Exercise Clause of the First Amendment, when the transfer neither coerces religious adherents to violate their beliefs nor penalizes religious conduct, where the law advances critical environmental and economic interests through neutral and generally applicable means.

STATEMENT OF JURISDICTION

This case arises from a First Amendment challenge brought by Montdel United under 42 U.S.C. § 1983. The United States District Court for the District of Delmont had subject-matter jurisdiction pursuant to 28 U.S.C. § 1331, as the case presents a federal question arising under the Constitution and laws of the United States.

The District Court granted a preliminary injunction on March 1, 2024. The Fifteenth Circuit Court of Appeals reversed that decision on November 1, 2024, finding no constitutional violation.

Petitioners timely filed a petition for writ of certiorari, which this Court granted on January 5, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1), which grants the Supreme Court jurisdiction to review cases from the United States Courts of Appeals by writ of certiorari.

STATEMENT OF THE CASE

This appeal concerns the State of Delmont's transfer of a portion of Painted Bluffs State Park, including an area known as Red Rock, pursuant to the Energy and Conservation Independence Act ("ECIA") (R. at 1). The ECIA, enacted in 2022, authorizes the State to enter agreements with private mining companies to facilitate mineral extraction critical for reducing fossil fuel dependency and complying with federal mandates (R. at 2-3).

The State acquired Painted Bluffs State Park through eminent domain in 1930 to preserve its natural beauty and provide public recreational opportunities (R. at 4). Since 400 A.D., the Montdel people, an indigenous group, have conducted religious practices at Red Rock, a geological formation of sandstone and limestone. There were exceptions during the World Wars and Great Depression (R. at 3-4). In the 1950s, the Highcliffes, a couple of Montdel descent, formalized the "Montdel Observance," with participants known as "Old Observers" (R. at 5).

In January 2023, following extensive environmental and economic impact studies, the Delmont Natural Resources Agency ("DNRA") approved transferring one-fourth of the park to Delmont Mining Company which will destroy Red Rock. (R. at 7-8). The State considered several factors: the State's commitment to clean energy, federal sustainability mandates, and economic conditions in local communities (R. at 6-7). Alternative mining technologies were considered but deemed impractical due to development timelines and environmental concerns (R. at 8).

Montdel United, a non-profit organization dedicated to protecting Red Rock, filed suit seeking injunctive relief on First Amendment grounds. The district court granted a preliminary injunction on March 1, 2024, but the Fifteenth Circuit reversed on November 1, 2024, finding no constitutional violation. On January 5, 2025, this Court granted certiorari to determine whether the ECIA and subsequent land transfer violate Petitioner's First Amendment Free Exercise and Free Speech rights.

SUMMARY OF THE ARGUMENT

The ECIA's transfer of Red Rock fits within established First Amendment Free Speech and Free Exercise principles.

Painted Bluffs State Park, including Red Rock, is a nonpublic forum. The purpose and special characteristics of Red Rock make it unsuitable for civic discourse. Under this Court's jurisprudence, it is not considered a place with communicative purposes.

The ECIA is a reasonable and content neutral statute that is free of viewpoint discrimination. The statute serves the State's interests of economic revitalization and sustainability. Mining for lithium under the ECIA is directly related to the state's legitimate objectives. If necessary, the ECIA constitutes a valid time, place, or manner restriction. Supporting the economy of nearby counties and reducing fossil fuel emissions are significant government interests. The statute serves the State's interests in a way that does not restrict speech more than necessary, leaving open ample alternative channels of communication.

Furthermore, a state's land management decisions that incidentally impact religious practices do not violate the Free Exercise Clause absent coercion or penalties. The ECIA neither compels Montdel United to violate their beliefs nor penalizes their religious activity—it merely exercises the State's authority to manage its own property for legitimate secular purposes.

The ECIA is also a neutral and generally applicable law. The ECIA serves valid secular purposes without targeting religious practices. Its uniform application demonstrates general applicability, avoiding the selective enforcement that would trigger strict scrutiny. Even if strict scrutiny applies, the State has compelling interests in environmental sustainability and economic development through narrowly tailored means. The ECIA only targets the lithium deposits after careful consideration, which satisfies the demanding requirements of strict scrutiny.

ARGUMENT

I. THE ECIA AND LAND TRANSFER DO NOT VIOLATE MONTDEL UNITED'S FIRST AMENDMENT FREE SPEECH RIGHTS

The ECIA facilitates Delmont's authority to manage its own land for economic and environmental purposes. Under this statute, the State approved the transfer of mining rights for Painted Bluffs State Park to Delmont Mining Company. Montdel United challenges the land transfer and mining activities, asserting that these actions violate their First Amendment rights. They seek injunctive relief to prevent the transfer and development of Red Rock, a geological formation that holds sacred significance to their religious practices.

First, the transfer of Red Rock is constitutional because it occurs in a nonpublic forum and is a content-neutral, reasonable restriction. The ECIA applies established land use criteria without targeting expressive conduct. Second, even if Red Rock were deemed a public forum, the ECIA qualifies as a valid time, place, and manner restriction. It is narrowly tailored to achieve the State's interests while preserving open alternative channels of communication. Therefore, the ECIA does not unconstitutionally restrict Free Speech.

This case comes as an interlocutory appeal of a preliminary injunction. 28 U.S.C. § 1292(a)(1). The Court "review[s] the District Court's legal rulings de novo, and its ultimate conclusion for abuse of discretion." *McCreary Cty. v. ACLU*, 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). A district court must also consider whether the plaintiff is "likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

A. Red Rock's Physical Characteristics and Purpose Confirm Its Status as a Nonpublic Forum.

The First Amendment, applicable to the States through the Fourteenth Amendment, *Gitlow v. New York*, 268 U.S. 652, 666 (1925), provides that Congress can make no laws "abridging the freedom of speech." U.S. Const. Amend 1. The threshold inquiry in a Free Speech claim is determining the forum's classification, which dictates the level of scrutiny applied to government restrictions. *Cornelius v. NAACP Legal Defense & Educ. Fund,* 473 U.S. 788, 797 (1985).

This Court recognizes three types of forums: traditional public forums, designated public forums, and nonpublic forums. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). Traditional public forums, such as streets and parks, are historically used for expressive activity, and restrictions must satisfy strict scrutiny. *Id*. at 45. Designated public forums are government properties open for public expression and are subject to the same scrutiny. *Id*. Nonpublic forums, however, are not traditionally or intentionally opened for public communication and may be regulated if restrictions are reasonable and viewpoint-neutral. *Id*. at 46.

Red Rock is not a traditional public forum. Public forums have "immemorially …been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry*, 460 U.S. 37 at 45. Although some parks are public forums, classification depends on historical use, not mere designation.[1] Painted Bluffs is a 100-square-mile expanse of forested highlands, acquired by Delmont for preservation and outdoor recreation, not discourse. (R. at 2, 40). Its characteristics preclude designation as a traditional public forum.

[1] See *Boardley v. United States DOI*, 615 F.3d 508, 511 (D.C. Cir. 2010) ("what makes a park a traditional public forum is not its grass and trees").

Red Rock is also not designated as a public forum. The State did not open Painted Bluffs with the intention of using it for public discourse. Delmont acquired the area "with the intent to preserve its natural beauty" and the area offers "public opportunities for camping, hiking, and fishing along the Delmont River. This designation included the Red Rock site." (R. at 40). The term "designation" demonstrates that Red Rock's purposes were not meant to be communicative.

A forum's status is determined by government intent, not private use. See *Cornelius*, 473 U.S. 788, 802 (1985) ("The government does not create a public forum by inaction or by permitting limited discourse"). Red Rock's use by the Montdel people does not transform it into a designated public forum. The government must affirmatively open a space for public expression to alter its forum status. *Id*.

The Fifteenth Circuit correctly classified Red Rock as a nonpublic forum. (R. at 40). While titled "park," the characteristics of Red Rock differ from those of a traditional park. Places like Central Park and municipal parks are popular areas for people to assemble. They are *known* as focal points for public discussion. Painted Bluffs, on the other hand, is a sprawling area of forested highlands. Forum classification must consider a location's special attributes, as regulations must be assessed in light of the forum's function. *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 at 650-651 (1981).

Red Rock's topography further precludes public forum status. It is described as "[a] barren area atop one of the park's highest bluffs. It is a small semi-circular area, nestled against the cliff's edge, and surrounded by smooth pointed stones" (R. at 50). This Court has reiterated that the "characteristic nature" of the forum must be considered, and a barren, small area on top of a rock is not somewhere traditionally used for public discourse. Again, under *Perry*, Red Rock is "not by tradition or designation a forum for public communication." *Id*. at 46.

Furthermore, nowhere in the record does it indicate that the park is used for general assembly or public discourse, a critical aspect of public forums. If the park is not traditionally used for the free exchange of ideas like a busy street or park, then it is not a traditional public forum. Even if there is some sort of expressive activity going on, the essence of the forum is still controlling. In *Cornelius*, this Court explained that "nor will [it] infer that the government intended to create a public forum when the nature of the property is inconsistent with expressive activity." *Cornelius*, 473 U.S. 788 at 803. The Equinox Festival's vendor permits also fail to establish a public forum. Permits were issued a mile from Red Rock, and limited licensing does not alter a site's forum classification. *Id*. at 802.

Red Rock's physical characteristics and historical use properly reflect its status as a nonpublic forum. As this Court has recognized, "on government property that has not been made a public forum, not all speech is equally situated, and the State may draw distinctions which relate to the special purpose for which the property is used." *Perry*, 460 U.S. 37 at 55. Because Red Rock lacks a history of public discourse and was never designated for expressive activity, it is a nonpublic forum. The State of Delmont may regulate its use so long as restrictions are reasonable and viewpoint-neutral.

B. The ECIA is a Content-Neutral Law that Reasonably Furthers Legitimate State Interests.

In a nonpublic forum, the State "may 'reserve the forum for its intended purposes, communicative or otherwise**,** as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Perry*, 460 U.S. 37 at 46.

A law is content-neutral if it regulates speech without regard to its message. *City Council of Los Angeles* v. *Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). A regulation is generally content neutral if it does not reference a speaker's viewpoint.

The ECIA is content-neutral because it governs only the sale and transfer of state land, without regard to speech or viewpoint. (R. at 6). The law authorizes land transfers based on objective criteria, such as economic and environmental feasibility, not expressive conduct. The lower courts correctly recognized its neutrality. (R. at 2).

In *Turner Broad. Sys. v. FCC*, 512 U.S. 622 (1994), this Court upheld must-carry provisions requiring cable operators to broadcast certain local stations, finding the rule content-neutral because it did not favor or suppress any particular speech. *Id*. at 652. Likewise, the ECIA regulates land use, not speech or religious expression. It authorizes lithium extraction without regard to viewpoint, message, or communicative impact.

A law remains content-neutral even if it disproportionately affects a particular group, so long as its purpose is unrelated to speech. A facially neutral law "is not discriminatory simply because it affects some groups more than others" and remains neutral if it serves purposes unrelated to expression. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc*., 425 U.S. 748, 771 (1976). Any argument holding the State has a motive for suppressing the speech of the Montdel people should be rejected (R. at 21). Like the plaintiff in *Turner*, Montdel United's "ability to hypothesize a content-based purpose for these provisions rests on little more than speculation and does not cast doubt upon the content-neutral character of [the regulation]." *Turner*,

512 U.S. 622 at 652.[2] Much like Congress's intent in *Turner*, Delmont's state legislator is passing a law based on significant state interests, not the content of certain speech.

The ECIA is a reasonable regulation on speech because the State has a legitimate interest in reviving the economy, and the ECIA provides a means that serves these interests. Delmont's largest lithium deposit lies beneath Red Rock, representing the most viable source for renewable energy production. (R. at 7). The ECIA addresses the needs of local communities because these deposits will bolster Delmont's economy. Alex Greenwood, Secretary of the DNRA, explained that the transfer will result in job creation. (R. at 48). Moreover, the decision was approved by residents of two nearby economically challenged counties with economically insufficient tourism industries. (R. at 7). Enacting legislation to open a new market in a struggling economy is a reasonable response to its interests.

Second, the ECIA will have a positive environmental impact by reducing fossil fuels. The transfer supports the State's commitment to becoming carbon-neutral within fifty years and adheres to federal mandates aimed at reducing fossil fuel consumption. (R. at 1). Extracting lithium will help Delmont use alternatives to fossil fuels amid a climate crisis, and it will meet the demands of increased use of electric alternatives to gas powered automobiles. (R. at 22). Third, the FNDRA mandates the use of sustainable energy resources in defense contracting to mitigate fossil fuel extraction. (R. at 7). This aligns with the State's environmental goals of sustainability and allows the State to obtain the sustainable resources it needs. The ECIA is a reasonable method to efficiently extract valuable minerals and achieve the State's goals.

[2] *See also United States* v. *O'Brien*, 391 U.S. 367, 383 (1968) (finding that "it is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an *alleged* illicit legislative motive.").

These interests are strong enough to justify mining at Red Rock. This Court in *Turner* recognized the State's economic interest as a substantial one. In the present case, the State has shown that the mining of Red Rock is needed to protect the local economy. Also, the ECIA is reasonable because "[t]he Act received endorsement from federal executive and legislative bodies. (R. at 6-7). Most importantly, Delmont is home to the largest lithium deposit on the continent. Accessing those minerals is in the State's best interest. The State has proven that the ECIA reasonably helps it achieve its interests.

Even if Red Rock is considered a public forum, the sale of the land should still be subject to a reasonable standard for government efficiency. Discussing the sale of a public fora, Justice Kennedy writes in a concurring opinion:

> In some sense, the government always retains the authority to close a public forum, by selling the property, changing its physical character, or changing its principal use. Otherwise the State would be prohibited from closing a park, or eliminating a street or sidewalk, which no one has understood the public forum doctrine to require. The difference is that when property is a protected public forum the State may not by fiat assert broad control over speech or expressive activities; it must alter the objective physical character or uses of the property, and bear the attendant costs, to change the property's forum status.

Int'l Soc'y for Krishna Consciousness v. Lee, 505 U.S. at 699 (1992) (Kennedy, J., concurring). Justice Kennedy recognized that the government retains the authority to close a public forum by changing its physical character or use. Because Red Rock's transfer alters its function from parkland to mining, the ECIA should be assessed under reasonableness review. Delmont is not passing legislation that is asserting "broad control over speech or expressive activities," for it is altering the objective physical character and uses of the property. This is well within the State's right. Because the State is only transforming Red Rock into a mining area, it should not be held to the highest level of scrutiny. If that were the standard, then, as Justice Kennedy noted, the State would never be able to close Red Rock for any tangible reason.

C. Even Under Intermediate Scrutiny the ECIA is a Valid Time, Place, and Manner Restriction that Furthers a Significant State Interest.

The lower courts dispute the forum classification of Red Rock. Even if this Court finds that Red Rock is a public forum, the ECIA remains constitutional as a valid time, place, and manner restriction.[3]

A restriction on speech in a public forum is constitutional if it is (1) content-neutral, (2) narrowly tailored to serve a significant governmental interest, and (3) leaves open ample alternative channels for communication. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 at 293 (1984).

1. The ECIA Does Not Regulate Content

The ECIA is content-neutral because, as established above, it regulates land use, not speech. (R. at 6). Its sole purpose is to facilitate state land transfers based on objective criteria, such as economic and environmental feasibility. Both lower courts correctly recognized that the statute does not target expression.

2. The ECIA is Narrowly Tailored to Advance Significant Governmental Interests

The State's interests in economic revitalization and environmental sustainability are not only important, but substantial and well-established under this Court's precedent.

The ECIA is narrowly tailored because it incorporates procedural safeguards that prevent arbitrary land transfers. Every transfer undergoes independent impact studies and a 60-day review process to ensure minimal disruption to affected parties. (R. at 6). The procedural safeguards ensure that the statute is not overly broad in its restrictions nor overly burdensome on expressive activities. Second, it was only after considering all available methods that the State decided that

[3] *See Pleasant Grove City v. Summum*, 555 U.S. 460, 469 (2009) (noting that in a traditional public forum, "[r]easonable time, place, and manner restrictions are allowed).

the controlled blasting method was the only current viable option to access the valuable minerals. (R. at 8-9). The consequences of the alternative methods are unknown, and they could cause more harm.

The means are narrowly tailored to serve the economic revitalization interests. The mining of lithium will have a direct positive impact on the local economy. (R. at 47). This indicates narrow tailoring because as explained in *City Council of Los Angeles* the regulation "responds precisely to the substantive problems which legitimately concern the State." *Id.* at 810.

The ECIA is narrowly tailored to serve the State's environmental interest. The District Court writes, "It seems unlikely that any single mining project is going to be decisive in the global effort to slow the warming of the planet." (R. at 23). The record, however, makes clear that lithium mining is an important step in addressing global warming. To insinuate that these materials would have only a miniscule impact on the environment is setting a dangerous precedent for future legislation aimed at combating climate change.

If that logic was adopted nationwide, then similar government efforts to curtail global warming would be difficult to enact. The State has identified a way to reduce fossil fuel usage, and solutions to global warming need to start somewhere. Lithium mining is a place to start. In other words, "the neutral regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *United States v. Albertini*, 472 U.S. 675, 689 (1985). Therefore, the State has shown that mining for lithium is a narrowly tailored means to achieve its interest.

In *Heffron v. Int' Soc'y for Krishna Consciousness*, the State of Minnesota had a substantial interest in orderly movement of the crowd. *Heffron v. Int' Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981). This Court found that the state's interest in confining a religious group's

solicitation activities to fixed locations was sufficient to serve a substantial state interest. *Id* at 654. If this Court recognizes orderly movement as a substantial government interest that may restrict speech, then surely economic revitalization and environmental concerns would be satisfactory interests.

Furthermore, the regulation in *Heffron* required groups to conduct certain activities *only at an assigned location* within the fairgrounds, even though application of the rule limited the religious practices of the organization. *Id*. The ECIA only requires that the Montdel people conduct their religious activity at a different location within the park. Also like the regulation in *Krishna*, the ECIA is directly connected to the State's interests. Regulations requiring groups to stay at their designated booths help conduct orderly movements. A law allowing a private mining company to mine for valuable lithium will help the local economy and reduce the need for fossil fuels.

It is also important to note that "the regulation 'need not be the least restrictive or least intrusive means,'". *Ward v. Rock Against Racism*, 491 U.S. 781, 798-99 (1989). The ECIA's guidelines ensure that the transfer process is narrowly tailored to achieve all of the State's interests, and it does not burden more speech than necessary because it leaves open ample alternative channels for communication.

3. The ECIA Provides Adequate Alternative Channels for Religious Expression.

The ECIA ensures that alternative locations remain accessible within Painted Bluffs State Park for ceremonial practices and festival activities, preserving meaningful opportunities for religious expression.

In *Clark v. Cmty. for Creative Non-Violence,* this Court upheld a National Park Service regulation restricting camping in certain parks as a reasonable time, place, and manner regulation that did not eliminate all opportunities for expressive conduct. *Clark*, 468 U.S. 288 at 297. An

important factor in this Court's decision was that "the Park Service neither attempts to ban sleeping generally nor to ban it everywhere in the parks. It has established areas for camping and forbids it elsewhere, including Lafayette Park and the Mall." *Id*.

Likewise, the ECIA does not ban prayer generally, nor does it ban it everywhere in Painted Bluffs. Given the substantial interest in the lithium deposits under Red Rock, the State's transfer of land requires only that the rituals be done elsewhere. Furthermore, the equinox festivals can still take place five miles down the riverbanks. (R. at 8).

In *Renton v. Playtime Theaters*, this Court upheld a zoning regulation that restricted where adult theaters could be located. When evaluating ample alternatives for communications, it held that "In our view, the First Amendment requires only that Renton refrain from effectively denying respondents a reasonable opportunity to open and operate an adult theater within the city" *Renton v. Playtime Theatres*, 475 U.S. 41, 54, (1986). Here, Delmont is not "effectively denying" the Montdel people a reasonable opportunity to conduct their religious activities.

Courts have consistently held that alternative channels for communication need not be exact replicas of the original forum. The Second Circuit emphasized that the alternative need not be a "perfect substitute: but only a reasonable alternative that allows continued expression. *Mastrovincenzo v. City of N.Y.*, 435 F.3d 78, 101 (2d Cir. 2006). Here, although the Montdel people must relocate their ceremonies from Red Rock, the ECIA ensures that they may continue their religious practices within the park, satisfying the alternative channels requirement.

The Sixth Circuit and the Ninth Circuit have approached the alternative methods requirement in a similar fashion.[4] The State here is allowing the Elders to conduct the rituals elsewhere within Painted Bluffs, satisfying the alternative methods of communication prong.

Because the ECIA is a reasonable and content-neutral statute that furthers legitimate state interests in a nonpublic forum, this Court should find that it does not violate Montdel United's right to free speech.

II. THE ECIA AND LAND TRANSFER DO NOT VIOLATE MONTDEL UNITED'S FIRST AMENDMENT FREE EXERCISE RIGHTS

While this transfer may impact the Montdel people's preferred location for religious ceremonies, incidental effects of government land management do not violate their First Amendment rights under Free Exercise Clause. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450-51 (1988). The land transfer neither prohibits religious practice nor singles out religious conduct for disfavored treatment.

The ECIA lawfully exercises state authority to manage public lands for economic and environmental goals. Under *Lyng*, the ECIA imposes no constitutional burden because it neither coerces religious practice nor penalizes activity. *Id*. at 449. The ECIA is a neutral and generally applicable law under *Employment Division v. Smith*, 494 U.S. 872 (1990), focusing on mineral extraction and environmental goals, not religious practice. The State applied the law to Red Rock based on geological and economic factors, not religious targeting.

[4] See *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 293 (6th Cir. 1998) ("The requirement that ample alternative channels be left available does not mean that there must be a channel where [plaintiffs] can express themselves in precisely the same manner as before the regulation."); see also *United States v. Griefen*, 200 F.3d 1256, 1261 (9th Cir. 2000) (holding that temporarily closing a small part of the Nez Perce Forest left Plaintiffs with sufficient alternative locations to express their views).

Even under strict scrutiny, the ECIA advances compelling interests in sustainability and economic development through narrowly tailored means, as shown by impact studies (R. at 6). By transferring Red Rock, the State lawfully exercises its authority to manage public lands for secular purposes without triggering constitutional protections under the Free Exercise Clause.

A. The ECIA Does Not Impose a Substantial Burden on the Montdel People's Religious Practices.

The Free Exercise Clause protects against government actions that substantially burden religious practices by coercing adherents to violate their beliefs or prohibiting religious exercise outright. *Lyng*, 485 U.S. at 450-51. The ECIA's incidental impact on the Montdel people's religious practices at Red Rock does not rise to the level of an unconstitutional burden.

This Court has consistently held that government land management decisions affecting religious sites do not violate the Free Exercise Clause unless they force religious adherents to choose between following their faith and facing legal consequences, economic sanctions, or other forms of state-imposed hardship. *Id*. at 449. In *Lyng*, the Court upheld road construction through Native American sacred land, holding that even "devastating" effects on religious practices do not constitute a substantial burden when the government uses its own property. *Id*. at 451-52. The Free Exercise Clause "does not require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Id*. at 449. This principle governs here.

The Ninth Circuit's application of *Lyng* in *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058 (9th Cir. 2008), further illuminates why the burden is merely incidental. There, the court found that using treated wastewater on sacred peaks did not substantially burden religious exercise because it neither coerced practitioners to violate their beliefs nor penalized religious activity. *Id*. at 1063. The court explicitly rejected arguments that diminished spiritual fulfillment alone could

constitute a substantial burden, holding that "the government's land use decisions must do more than merely offend religious sensibilities." *Id.* at 1070.

Like the road construction in *Lyng* and the snowmaking in *Navajo Nation*, the State's lithium mining activities under the ECIA constitute a legitimate exercise of public land management that only incidentally affects religious practice. Unlike laws that prohibit religious ceremonies, levy fines on practitioners, or condition government benefits on renouncing religious exercise, the ECIA merely alters the location where rituals may take place. The land transfer does not force adherents to abandon their faith, participate in religiously objectionable conduct, or incur penalties for continuing their practices. The relocating of ceremonies "an additional five miles down the riverbanks" (R. at 8), while not ideal from the Montdel people's perspective, preserves their ability to practice their faith.

Montdel United argues that Red Rock's unique spiritual significance makes alternative locations insufficient, effectively prohibiting meaningful religious exercise. Courts have consistently rejected such arguments.[5] The Montdel people's own historical practices demonstrate their religion's resilience and adaptability. The record reveals "the Montdel people's rituals did not occur during the World Wars and the Great Depression due to economic hardships, wartime obligations, and other challenges" (R. at 4). These historical adaptations, while driven by different circumstances, demonstrate that temporary interruptions or modifications to religious practice have not destroyed the Montdel people's faith.

[5] See *Apache Stronghold v. United States*, 95 F.4th 686, 695 (9th Cir. 2024) (holding that even the complete destruction of sacred land did not constitute a substantial burden absent coercion or penalties); *see also Lockhart v. Kenops*, 927 F.2d 1028, 1036 (8th Cir. 1991) (emphasizing that the government is not "constitutionally required to preserve land use in alignment with specific religious practices unless coercion or penalties are involved").

As *Lyng* warned, allowing religious groups to veto the State's land use decisions would effectively create a "'religious servitude' on vast tracts of federal property." *Id*. at 452-53. This concern is not theoretical. The record reveals "several other religious groups in Delmont made claims to spaces or structures located on public land on religious grounds" following Montdel United's challenge (R. at 48). Allowing religious objections to dictate land use would constrain the State's ability to manage public lands for sustainability and economic development.

The Free Exercise Clause does not grant religious practitioners veto power over legitimate State land management, even when such decisions profoundly impact spiritual practices. Despite Red Rock's significance to the Montdel people's traditions, the Free Exercise Clause does not guarantee religious groups permanent access to public land. The ECIA does not criminalize religious practices, force practitioners to act against their faith, or impose penalties on worship. Instead, it represents a neutral land use decision aimed at advancing substantial state interests. Under this Court's precedent, such incidental effects do not rise to the level of a constitutional violation.

B. The ECIA Is a Neutral and Generally Applicable Law That Does Not Trigger Strict Scrutiny.

Under *Employment Division v. Smith*, 494 U.S. 872 (1990), neutral and generally applicable laws need only satisfy rational basis review, even if they incidentally burden religious practices. Strict scrutiny applies only when a law targets religious conduct or lacks general applicability, such as by creating a system of individualized exemptions. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). Because the ECIA meets both requirements, strict scrutiny should not apply.

1. The ECIA Is Neutral Because It Advances Legitimate Governmental Interests Without Targeting Religion

A law is neutral if it serves a nonreligious objective and neither explicitly nor implicitly targets religious exercise. *Id*. at 533. Courts examine both the text and operation of a law to determine if it "infringe[s] upon or restrict[s] practices because of their religious motivation." *Id*. The ECIA readily satisfies this standard.

First, the ECIA is facially neutral, containing no reference to religious practices or spiritual land use. Unlike the ordinances in *Lukumi*, which singled out Santeria practices by using terms like "sacrifice" and "ritual," the ECIA's provisions address solely nonreligious objectives: environmental sustainability and economic revitalization through mineral extraction. *Id*. at 527; (R. at 6-7). The ECIA's text mirrors the neutral zoning ordinance upheld in *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006), where the court emphasized that "[n]eutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular religious practice or belief." *Id*. at 649

Second, nothing in the ECIA's implementation suggests hostility toward religious exercise. The law establishes clear, objective criteria for land transfers, requiring "both independent environmental impact studies and economic impact studies" (R. at 6). These neutral standards guided the DNRA's decision-making, as demonstrated by their reliance on geological reports confirming "the largest lithium deposit ever discovered in North America" (R. at 7) and comprehensive environmental assessments of mining impacts (R. at 8-9). Courts have consistently upheld such facially neutral regulations that serve legitimate secular purposes, even when they may incidentally burden religious practices.[6]

[6] See *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214 (D. Md. 2020) (holding that pandemic-related restrictions on gatherings applied equally to religious and secular entities and were justified by public health concerns, warranting rational basis review).

Montdel United cites Delmont's Governor's remarks (R. at 53), but they do not amount to the systematic bias found in *Lukumi*, where officials openly expressed animosity toward Santeria adherents. *Id*. at 542. Rather, the record confirms that the ECIA's purpose is rooted in legitimate State objectives: promoting renewable energy, complying with federal mandates, and stimulating economic growth in struggling communities (R. at 6-7).

2. The ECIA Is Generally Applicable Because It Applies Uniform Standards Without Religious Consideration

A law lacks general applicability when it regulates religious conduct more stringently than comparable secular activities or grants exemptions that undermine religious neutrality. *Id*. at 543. The ECIA applies uniform environmental and economic criteria to all state land transfers, evaluating proposals through objective standards without regard to religious considerations.

Unlike the ordinance in *Chabad of Nova*, 575 F. Supp. 2d 1280, 1285-86 (S.D. Fla. 2008), which explicitly barred religious institutions while permitting comparable secular entities, the ECIA's framework applies consistently to all land transfers. The DNRA rejected transfers threatening endangered species in the Delmont Mountains and water quality near Grove Flats while approving environmentally viable projects like Red Rock based on the same feasibility criteria (R. at 9-10).

Montdel United's argument that environmental concerns received priority over religious objections misunderstands the general applicability requirement. As *Lukumi* established, general applicability analysis examines whether a law selectively "impose[s] burdens only on conduct motivated by religious belief" while permitting similar secular conduct. *Id*. at 543. The ECIA uniformly applies feasibility criteria, untethered to religious considerations. Similarly, the First Circuit struck down an ordinance that specifically targeted religious property while exempting comparable secular properties. *Roman Catholic Bishop v. City of Springfield*, 724 F.3d 78, 82 (1st

Cir. 2013). Unlike these discriminatory schemes, the ECIA evaluates all transfers through the same lens of environmental and economic feasibility.

Because the ECIA is both neutral and generally applicable, the standard of review is rational basis review. The statute easily meets this deferential standard, as it advances legitimate objectives: promoting renewable energy, fostering economic growth, and safeguarding environmental resources. The incidental effect of these policies on the Montdel people's religious practices does not undermine the ECIA's constitutionality under *Smith*.

C. Even Under Strict Scrutiny, The ECIA Advances Critical Environmental and Economic Interests Through Narrowly Tailored Means

Strict scrutiny requires the State to demonstrate that the ECIA serves compelling government interests and does so through narrowly tailored means. *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). The ECIA satisfies this test by advancing critical environmental and economic objectives while imposing no greater burden on religious exercise than necessary. *Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021).

1. The ECIA Advances Multiple Compelling State Interests That Justify Any Incidental Burden on Religious Exercise

The ECIA serves compelling interests in renewable energy and economic revitalization. (R. at 47-48). This Court has long recognized that government interests of the "highest order" can justify incidental burdens on religious exercise. *Lukumi*, 508 U.S. at 546. Here, the State's interests rise to that demanding level.

First, the ECIA serves the compelling interest of economic development in struggling communities. The counties surrounding Painted Bluffs "have largely depended on a tourism industry that has not met their significant economic needs." (R. at 47-48). The economic impact study demonstrates that lithium mining operations will provide "substantial economic benefits"

through job creation and economic stimulation. (R. at 41). This Court recognizes economic revitalization as a legitimate objective. *Kelo v. City of New London*, 545 U.S. 469, 484 (2005).

Second, the ECIA advances environmental and sustainability objectives mandated by federal law. Congress's FNDRA specifically requires "the use of sustainable energy resources in defense contracting as part of a global effort to mitigate fossil fuel extraction." (R. at 7-8). To meet urgent mandates, the State must access Red Rock, which houses North America's largest lithium deposit. Achieving specific policy goals aligned with federal mandates constitutes a compelling interest. *Little Sisters of the Poor v. Pennsylvania*, 591 U.S. 657 (2020).

Compliance with federal environmental mandates and economic revitalization are firmly supported in the record.[7] The State has produced material evidence demonstrating both the environmental necessity of accessing Red Rock's lithium deposits and the specific economic benefits that will flow to surrounding communities through extensive impact studies and economic assessments. (R. at 41, 47-48). These core objectives require access to Red Rock's resources.

2. The ECIA's Targeted Approach to Accessing Critical Lithium Deposits Satisfies Narrow Tailoring

Once a compelling interest is established, strict scrutiny requires that the State's chosen means be "narrowly tailored" to achieve those interests. *Fulton*, 593 U.S. at 532. The ECIA carefully limits the land transfer to what is essential in order to access critical lithium deposits.

First, the DNRA has demonstrated that alternative mining locations are inadequate. The State rejected alternative sites due to risks to endangered species and aquifer contamination. (R. at 9-10). These site-specific determinations reflect careful consideration rather than arbitrary selection. Second, the State explored alternative mining technologies but found that mitigation

[7] See *Fulton*, 593 U.S. at 542 (finding that speculative or broadly generalized interests are insufficient to meet the compelling interest standard under strict scrutiny).

methods "are still in development and are not expected to become feasible for at least another twenty years." (R. at 48). The State cannot wait decades for speculative solutions due to the urgency of its interests. Third, the land transfer affects only "one-fourth of Painted Bluffs State Park," preserving the majority of the park while ensuring access to lithium deposits. (R. at 47).

The ECIA's requirements contrast sharply with the overbroad restriction struck down in *McCullen v. Coakley*, 573 U.S. 464 (2014), where this Court held that Massachusetts' 35-foot buffer zones burdened more speech than necessary because the State failed to explore narrower alternatives. *Id*. at 490-91. Here, the ECIA minimizes burdens by affecting only essential land.

Rather than imposing broad restrictions without considering practical alternatives, the ECIA follows a more refined approach.[8] The State has precisely demonstrated why alternative sites and methods are unworkable, limiting only the smallest land area necessary. While the government must pursue alternatives that impose fewer burdens, it need not adopt speculative or infeasible measures. *Gonzales*, 546 U.S. at 428. The State must only demonstrate that its chosen approach advances its interests while minimizing external burdens.

The ECIA's careful approach to accessing vital lithium deposits reflects the State's commitment to minimizing religious burdens while pursuing critical environmental and economic objectives. Through extensive studies, systematic evaluation of alternatives, and preservation of the majority of Painted Bluffs State Park, the State has demonstrated proper tailoring of its actions. Under this Court's precedent, the Free Exercise Clause requires no more. Because the ECIA neither coerces religious practice nor singles out religious conduct, and

[8] See *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430 (2006) (requiring the government to provide concrete evidence that no less restrictive means can achieve its interest).

because it advances compelling interests through narrowly tailored means, this Court should reverse the District Court's preliminary injunction.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court affirm the decision of the Fifteenth Circuit and remand to the district court for entry of an order DENYING Petitioner's request for preliminary injunction.

Dated: January 31, 2025

CERTIFICATE OF COMPLIANCE

We, the undersigned members of Team 004, certify the following:

1. The work product contained in all copies of this brief is solely that of the team members.

2. The team has fully complied with the governing honor code of our law school.

3. The team acknowledges compliance with all Competition Rules.

Respectfully submitted,

Team 004