No. 24-CV-1982

In the Supreme Court of the United States

MONTDEL UNITED,

PETITIONER,

v.

STATE OF DELMONT AND
DELMONT NATURAL RESOURCES AGENCY

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE
UNITED STATES OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENTS

Team 6

QUESTIONS PRESENTED

1. Whether the ECIA and the subsequent transfer of Red Rock violates Montdel United's First Amendment Free Speech rights when Red Rock is a non-public forum, and the transfer is driven by the State of Delmont's economic and environmental goals without reference to the Montdel's observances.
2. Whether the ECIA and the subsequent transfer of Red Rock violates Montdel United's First Amendment's Free Exercise rights when Delmont did not coerce the Montdel into performing acts contrary to their religious beliefs.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on this matter on November 1, 2024. *Montdel United v. State of Delmont and Delmont Natural Resources Agency (Montdel United II)*, No. 24-CV-1982, slip op. at 1 (15th Cir. Nov. 1, 2024). The petitioner timely filed a petition for writ of certiorari, which this Court granted on January 5, 2025. This Court has jurisdiction over the matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

I. Formation of Painted Bluffs State Park

The State of Delmont ("Delmont") was established almost two centuries ago, in 1855. R. 3. A roughly 100-square-mile expanse of highlands within Delmont - renowned for its striking rock formations and remote wilderness - was named Painted Bluffs State Park ("Painted Bluffs") in 1930. R. 3, 4. Delmont established the park with the intent to preserve its natural beauty, and offered the public opportunities for camping, hiking, and fishing along the river. R. 4. Within the park is a landmark known as Red Rock. R. 2. Due to its challenging geography, Red Rock and its surrounding area were never claimed by settlers in these early years. R. 4. However, the record reflects that the Montdels, an Indigenous group native to the Delmont area, have performed religious rituals at Red Rock predating the establishment of the state. R. 2, 3.

II. The Montdel's Religious Observances at Red Rock

Historical accounts indicate that the Montdel's religious ceremonies were conducted just four times a year - during the fall and spring equinoxes and the summer and winter solstices - for an unknown number of years. R. 3. During the nineteenth century, the Montdel people experienced a period of turmoil which resulted in a significant population decline, afterwhich only a few thousand individuals remained. *Id*. By the turn of the century, the remaining Montdel intermarried, dispersed, and assimilated into other tribes and communities, ceasing to exist as a distinct indigenous culture. *Id*. After Delmont's formation, the few remaining Montdel people continued their religious practice of traveling to Red Rock at designated times, although the level of participation varied from year to year, and even stopped for a number of years. R. 4.

In 1950, the Highcliffe's - a couple of Montdel heritage whose families had assimilated into other tribes - sought to normalize the Red Rock religious practices as the "Montdel Observance." R. 5. They recruited members from various Native American tribes as well as

individuals outside of the Native American community to reinitiate their formal pilgrimages to Red Rock and organize the religious group administratively. *Id*. Over the years, the equinox rituals have evolved into a festival-like event. *Id*. Attendees at these observances include not only people of Montdel heritage, but also college students on spring break and seasonal festival goers. *Id*. While the "Old Observers," participants in the formal rituals held since 1952, do not participate in additional festival activities, they have never objected to them taking place concurrently with the Montdel Observance. R. 6.

III. The Delmont Natural Resources Agency Approves Delmont's Transfer For Mining

Delmont's environment is notable for its composition, which is rich in valuable minerals. R. 6. Accordingly, mining plays a pivotal role in Delmont's economy. *Id*. Painted Bluffs contains the largest lithium-bearing pegmatite deposit ever discovered in North America with reserves of other minerals spread across the region. *Id*., R. 7. Delmont's government enacted the Energy and Conservation Independence Act (the "ECIA") as part of their agenda to stimulate the state's economy and reduce fossil fuel dependency by facilitating the mining of lithium, nickel, and copper. R. 6. Under the ECIA, Delmont was permitted to enter into land transfer agreements with private mining companies to extract these valuable minerals. *Id*. These land transfers are managed by the Delmont Natural Resources Agency ("DNRA"). *Id*.

The ECIA requires that each transfer is subject to independent environmental and economic impact studies before the DNRA may proceed. *Id*. The DNRA approved the land transfer of Red Rock because mining operations in the area would further Delmont's goal of reducing fossil fuel reliance and substantially boost the local economy. R. 9. Although the impact study reported that the mining operations would destroy Red Rock, the DNRA determined that waiting for slightly less destructive alternative technology could take over twenty years and was not practical. *Id*. Thus, in

January 2023, the DNRA executed an agreement to transfer one-fourth of Painted Bluffs, including the Red Rock area, to Delmont Mining Company. *Id*.

IV. Montdel United Opposes the Transfer of Painted Bluffs

Curiously, although Red Rock is government property and Delmont's government has the authority to determine its optimal use, Montel United brought this case to fight the transfer. R.7. Montdel United was established in 2016 by Priscilla Highcliffe, the daughter of the late Highcliffe, with the mission of opposing the transfer of Painted Bluffs to a private company. *Id*.

Montdel United is concerned with the preservation of their religious traditions, however, the mining operations would have very little effect on the Montdel Observance. R. 8. The traditions could be continued just five miles down the riverbank. *Id*. Before the transfer was finalized, the Governor of Delmont met with Montdel United and frustrations were aired by both parties. R. 53. The Governor explained that acquiescence of the Montdel religious traditions did not make the land public property, the land is in fact government owned, and the government has the obligation to make a decision that best benefited the State. R. 48. Subsequently, Montdel United filed this suit against the State of Delmont and the DNRA.

SUMMARY OF THE ARGUMENT

The First Amendment to the United States Constitution must not be used as a shield to prevent a state government from lawfully acting in the best interests of its environment, economy, and people. Governments have the right to restrict access to a non-public forum as long as the restrictions are viewpoint-neutral, and reasonable and there is no coercive prohibition of religious exercise. The appellate court correctly denied the petitioner's request for preliminary injunction. The judgment below should be affirmed.

Red Rock is a non-public forum because Delmont never intended to open Painted Bluffs for public discourse. Rather, Delmont's intention was to preserve the park's natural beauty. Allowing the Montdels to perform limited religious observances does not transform Red Rock into a public forum or obligate Delmont to surrender control over its use. Given its remote nature, infrequent expressive activities, and the government's well-established right to regulate non-public forums, Delmont's actions were entirely constitutional.

Since Red Rock is a non-public forum, First Amendment speech may be restricted so long as the restriction is content neutral and reasonable. The transfer of Red Rock was made without reference to the observances of the Montdel people. It is justified by the expected economic and environmental benefits of mining the area, and is thus content neutral. Furthermore, while the transfer impacts the Montdel more than others, this impact is merely incidental and thus constitutional.

The transfer of Red Rock only needs to align with the forum's purpose, and need not be the most or only reasonable option. Given Red Rock's status as a non-public wilderness area with significant mining deposits, transferring rights to achieve environmental and economic goals is

justified. With the deference given to reasonability, the transfer meets the standard and is constitutional.

The Free Exercise Clause exists to protect individuals from government coercion against their religious beliefs - not to grant special privileges over government owned land. Delmont's transfer of Painted Bluffs neither forces the Montdels to act against their religion nor targets them for discrimination. The land transfer would limit everyone's access to the portion of the park where mining is taking place. Thus, Montdel United's Free Exercise Claim has no valid basis.

Moreover, Delmont has a compelling interest in transferring the land, and the ECIA is precisely tailored to accomplish that interest. The transfer promotes the mining of lithium, nickel, iron, and copper - critical to reducing fuel dependency and boosting Delmont's economy. The ECIA meets the required level of scrutiny by directly advancing these interests without unnecessary government overreach. Delmont's economic and energy priorities justify the Act.

The lower court's decision upholds the doctrine that a state has the authority to manage its own land. Red Rock is a non-public forum, and Delmont's restriction is viewpoint neutral and reasonable. Delmont did not coerce the Montdel to abandon their religious practices, as there are reasonable opportunities to continue those same practices. It would be fundamentally wrong to allow Montdel United to use this nation's constitution to prevent Delmont from lawfully managing its interests.

STANDARD OF REVIEW

This case comes as an interlocutory appeal of a preliminary injunction. 28 U.S.C. § 1292(a)(1). The Supreme Court's review in such cases involves an examination de novo of the lower courts legal conclusions. *McCreary Cty. v. ACLU, 545 U.S. 844, 867 (2005)*. The ultimate decision to grant or deny the preliminary injunction will be reviewed for abuse of discretion. *Id*.

ARGUMENT

I. Montdel United's First Amendment Free Speech Rights Were Not Violated Because Red Rock is a Non-Public Forum and the Respondent's Restrictions Were Content Neutral and Reasonable.

The First Amendment's "free speech clause," applicable to the states through the Fourteenth Amendment, *Gitlow v. New York*, 268 U.S. 652, 666 (1925); protects citizens against restrictions of their freedom of speech. *U.S. Const. Amend. 1*. Provided that the speech at issue is protected speech, the next step is to determine the nature of the forum because "the extent to which the Government may limit access depends on whether the forum is public or non-public." *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 797 (1985). If the forum is deemed to be a traditional public forum, speakers may only be excluded if "the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest." *Id*. at 801. Similarly, if the forum is deemed to be a designated public forum, "speakers cannot be excluded without a compelling governmental interest." *Id*. However, if the forum is deemed to be a non-public forum, access can be restricted as long as the restrictions are viewpoint-neutral and reasonable. *Id*.

A. Red Rock is a Non-Public Forum Because it is a Remote, Government-Owned Space Lacking Sufficient Evidence to Establish it as a Public Forum.

Designated public fora "consist[] of public property which the state has opened for use by the public as a place for expressive activity." *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*. 460 U.S. 37, 45 (1983). This type of fora can only be created when the government intentionally opens such space for public discourse. *Cornelius*, 473 U.S. at 802. Inaction or "permitting limited discourse" does not create a public forum. *Id*. Examples of such fora include meeting spaces on college campuses, locations for school board meetings created by statute, and municipal theaters open to the general public. *See Widmar v. Vincent*, 454 U.S. 263, 267 (1981); *see also Madison Joint School District v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 174 (1976); *see also Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552 (1975).

Painted Bluffs was acquired by Delmont through eminent domain in 1930. R 4. Red Rock is not a designated public forum because Delmont did not intentionally open this space for public discourse, rather, the intention was to preserve the park's natural beauty. *Id*. While the Montdel people have continued their observances at Red Rock, permission of this does not equate to intention to create a designated public forum. *See Cornelius*, 473 U.S. at 802.

A Traditional public forum "is government property which has immemorially been held in trust for the use of the public, and . . . has been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n*, 460 U.S. at 45 (quoting *Hague v. Comm. for Indus. Org*., 307 U.S. 496, 515 (1939)). Public places "historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks" generally, but don't always, fall within this definition. *United States v. Grace*, 461 U.S. 171, 177 (1983). It is not enough to say that Red Rock is a traditional public forum because of the "characterization ascribed to [it] by the government." *Boardley v. U.S. Dep't of Interior*, 615 F.3d

508, 514 (D.C. Cir. 2010). The Court should look holistically at determinative factors and the purpose that Red Rock serves, "either by tradition or specific designation," to determine that it is a non-public forum. *Id*. at 514.

Although Red Rock is located within a park and has long been used for expressive activities, these factors are not dispositive of Red Rock's forum categorization. *See Grace*, 461 U.S. at 177. By establishing Painted Bluffs, Delmont intended to preserve the area's natural beauty. R. 4 The park offered opportunities for the public to enjoy the area while they camped, hiked, and fished along the Delmont River. *Id*. While the Montdel people were permitted to continue their religious observances, the park was never held in trust for this purpose. "Publicly owned or operated property does not become a 'public forum' simply because members of the public are permitted to come and go at will." *Grace*, 461 U.S. at 177.

Furthermore, considering the sporadic nature of the Montdel Observance, it cannot be said that Red Rock shares the same function immemorially as a city park or street. *Perry Educ. Ass'n*, 460 U.S. at 45; R. 4. "A street is continually open . . . and constitutes [] a necessary conduit in the daily affairs of a locality's citizens." *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 651 (1981). In *Heffron*, the court distinguished the Minnesota State fairgrounds from a traditional public forum, stating that the fair "is a temporary event attracting great numbers of visitors who come to the event for a short period . . ." *Id*. Just like the fairgrounds in *Heffron*, Red Rock is not a necessary conduit in the daily affairs of the Montdel. The Montdel Observance occurs on just four days a year and there were periods of time when the Observance did not occur. R. 4. Regardless of the great number of people that might arrive at the time of the event, the land is still not considered a traditional public forum.

Despite the activities taking place at Red Rock, the land remains an expansive and remote wilderness area. Multiple courts, including the Connecticut Supreme Court, have held that a large undeveloped state forest is not a traditional forum. *State v. Ball*, 260 Conn. 275, 285 (2002) (internal citation omitted). The record demonstrates that Red Rock is a large, remote space that is owned by the Government and occasionally used for expressive activities. As such, this land cannot be a traditional public forum. The evidence supports that Red Rock is a non-public forum.

B. The Transfer of Red Rock is Viewpoint Neutral Because it Does Not Reference the Regulated Speech and Any Incidental Suppression is Lawful

Because Red Rock is a non-public forum, the transfer need only be tested under the standards in *United States Postal Serv. v. Council of Greenburgh Civic Ass'ns.* 453 U.S. 114, 131 (1981). This Court's standards state that within non-public fora anyone is subject to a prohibition of speech without violating the First Amendment, so long as the government acts reasonably and the prohibition is content neutral. *Id*. Since the transfer of Red Rock, a non-public forum, is both viewpoint neutral and reasonable, it does not violate the First Amendment rights of the Montdel people.

The first point to address in a non-public forum analysis is if the restriction in question is content neutral. The transfer of Red Rock, based upon this Court's jurisprudence and both lower court's decisions, is clearly content neutral because the sale was justified without reference to the Montdel's speech and any suppression of speech would be incidental and thus, legal.

To determine content neutrality, a court examines whether the action was justified with reference to the regulated speech; if it was not, then it is likely neutral. *Boos v. Barry*, 485 U.S. 312, 320 (1988). For a regulation to be justified based on the speech or parties involved, there must be clear evidence that the State prohibited the speech "merely because public officials

disapprove[d] [of] the speaker's view." *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 132. In *Adderley v. Florida*, where students occupied the driveway of a non-public jail to protest racial segregation, this Court explained that "[t]he State… has power to preserve the property under its control for the use to which it is lawfully dedicated", and required proof that the sheriff acted with a lack of neutrality. 385 U.S. 39, 47 (1966). No such proof was provided because there was no evidence that the sheriff had denied the protestors permission due to any animus with the objectives. *Id.* at 47. Furthermore, there had been no other occasion in which "similarly large groups… [had] been permitted to gather on [that] portion of the jail grounds." *Id.* The record contained no evidence that the sheriff's decision was made with a bias towards the protestors' protected speech, but instead because their presence was disallowed on the part of jail grounds used for jail uses. *Id.* This demonstrated that the action was not related to the regulated speech leading this Court to conclude that the regulation was content neutral. *Id.* at 48.

Similarly, in *Council of Greenburgh Civic Ass'ns*, a civic association sued the USPS because they were ordered to stop placing notices in mailboxes, which were not considered a public forum. 453 U.S. at 132. While State owned property is subject to scrutiny on free speech restrictions, this Court has routinely held that the "guarantees of the First Amendment have never meant 'that people… have a constitutional right to do so whenever and however…'" *Id.* at 133. In *Council of Greenburgh Civic Ass'ns*, this Court held that the restriction was content neutral because, again, nothing in the record indicated that there was bias towards the speech of the Greenburgh Civic Association. *Id.* at 135 (Brennan, J., concurring). In fact, the regulation on placing notices in mailboxes applied to all mailed items equally, which indicated neutrality. *Id.* Similarly, it was content neutral because the regulation was justified as keeping the services of the busy USPS running smoothly, which when considered on its own is entirely without reference to

the protected speech. *Id.* at 122. Based on these two cases, when a law or regulation justifies itself without reference to the regulated speech, then the regulation is content neutral.

Thomason v. Jernigan is an example of a case in which a State action was not content neutral because it was justified with reference to the speech. 770 F. Supp. 1195, 1201 (1991). There, protestors blocked parking access to a clinic and the city ordered a vacation of the area. *Id.* at 1198. The court determined that the action was not content neutral by examining legislative history to assess the action's justification. *Id.* at 1199. Despite the State's contentions that the motivation was for regulating traffic, the court still determined that it was not content neutral because "the record clearly show[ed] that the… traffic problems to be regulated [were] the plaintiffs' protest activities." *Id.* at 1201. By looking at memorandums, meeting notes, etc., the court found that the action was prompted by the demonstrations against Planned Parenthood. *Id.* at 1198. Specifically, the Planning Director stated that vacation would likely disperse the protestors. *Id.* at 1201. This, along with the absence of other demonstrations in that area, revealed that the action was justified in reference to the protestor's speech. *Id.* The court found that the State did not even attempt to justify its vacation without reference to the protests. *Id.*

This Court has consistently held that a State action does not lose its content neutrality simply because it incidentally suppresses one form of speech more than another. *Ward v. Rock Against Racism*, 491 U.S. 781, 792 (1989). For instance, in *Ward*, this Court stated that "[a] regulation… unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers…." *Id.* Thus, it is insufficient for a plaintiff to merely show that a State action suppressed their particular speech. So long as the action is content neutral, any incidental suppression of that speech is constitutional. *Id.*

With respect to the transfer of Painted Bluffs, it is abundantly clear that this is a content neutral action because it does not justify itself with reference to the Montdel people's speech and any suppression of their speech more than another's isincidental and legal. Red Rock is a state-owned non-public forum, and Delmont is free to transfer it as it so chooses, so long as it is based in content neutrality. In the same way that the sheriff justified his actions with unbiased concerns, Delmont has justified its transfer of Red Rock with studies that show this action as being both environmentally and economically sound. Considering Delmont's economy is supported strongly by mining and that Delmont sought to meet the demands of the ECIA, it is clear this was justified entirely without reference to the observances of the Montdel. R. 7-9. Here, the transfer of property was justified entirely without reference to the Montdel people or their speech, the same way that the sheriff's actions in *Adderley*'s were justified without reference to the protestors. *Adderley*, 385 U.S. at 47. The record further shows that the transfer of Painted Bluffs was justified by the fact that alternative mining technologies would not be available in time to meet their climate goals. R. 9. This is no different than content neutral removal of protestors justified for other purposes without regard to their speech in *Adderley*. 385 U.S. at 47. As such, the transfer of Red Rock is as content neutral as the sheriff's actions because the transfer was justified entirely without reference to protected speech.

Additionally, Delmont's actions are content neutral because they are applied to all equally and were justified by valid needs of the State. R. 7-9. Nothing in the record indicates that the transfer of Painted Bluffs was in response to the Montdel people's religious practices, the same way that nothing in the legislative history in *Greenburgh* indicated that the State's actions were made with reference to the civic associations. *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 135. Just as the regulation in *Greenburgh* applied to anyone placing notices, the transfer of Painted

Bluffs applies to anyone using the park. R. 21. As the district court held, "even if no expressive activity took place at Red Rock, those justifications… would be unchanged." R. 22. Furthermore, the regulation is unrelated to the suppression of ideas but is instead entirely justified by the need to meet the demands of Delmont's climate policies. R. 7-9. This is similar to the justification for the regulation in *Greenburgh* which sought to ensure the smooth operation of the USPS. *Council of Greenburgh Civic Ass'ns*, 453 U.S. at 122. Therefore, just as the court in Greenburgh held that the action was justified without reference to the protected speech, this Court should hold the same as to Red Rock's transfer.

Conversely, Delmont's transfer can be distinguished from the regulation in *Thomason*. The ordered vacation in the *Thomason* case was not content neutral because the legislative history made clear that the justifications could not be separated from the protests given the Planning Director's statements and reasoning. *Thomason*, 770 F. Supp. at 1201. Here, the situation is clearly different because nothing within the record suggests that the transfer is related to the Montdel's protected observances. R. 7-9. In *Thomason*, the court held that the State had failed to justify its action without reference to the protests, but here, the record shows that Delmont has consistently justified its action without reference to the Montdel, instead justifying its action with its state environmental goals and economic impact studies. 770 F. Supp. at 1201; R. 9. While Montdel United argued that Delmont expressed a loss of patience and exasperation with the Montdel, the district court held that this perception could not prove the transfer was justified by their religious observances because Delmont consistently emphasized that the decision was environmentally and economically motivated. R. 21-22. Therefore, it is clear that the justification for the transfer of Red Rock being based on environmental and economic goals is distinctly different from the justification in *Thomason* and thus the court should find that the transfer is content neutral.

Lastly, Montdel United incorrectly argued that this transfer could not be content neutral because even though it's environmentally justified, it specifically and unfairly impacts them due to their ties. However, just because the Montdel are particularly impacted does not mean the transfer is not content neutral. In *Ward*, this Court explained that State actions may still be content neutral even when they disproportionately affect a particular individual or group. *Ward*, 491 U.S at 792. Just because the Montdel people would be impacted at a higher degree does not make it unconstitutional because the suppression is incidental as the transfer is justified entirely without reference to them. *Id.* Therefore, it is clear that the transfer of Painted Bluffs was content neutral because the transfer did not reference the Montdel's speech and any suppression of Montdel observances is incidental and thus legal.

C. The Transfer of Red Rock is Reasonable Because it Aligns With the Forum's Purpose and Need Not Be The Most Reasonable Method.

The second step of analyzing restrictions in a non-public forum is determining whether the action was reasonable. Here, Delmont's transfer of Painted Bluffs does not infringe upon the Montdel people's free speech because it is reasonable in light of the forum's purpose and a reasonable transfer need not be the least restrictive method of attaining the State's goal.

The cases best illustrating this include *Perry Educ. Ass'n* and *Cornelius.* In *Perry*, a public school's mail system was for the exclusive use of union members. *Perry Educ. Ass'n*, 460 U.S. at 45. This Court explained that a restriction is reasonable in light of the forum when an action is "wholly consistent with the District's legitimate interest in "'[preserving] the property . . . for the use to which it [was] lawfully dedicated.'" *Id*. at 51. There, the lawfully dedicated use was a non-public mail system assigned exclusively to recognized bargaining representatives which, acting as a "permissible labor practice," was entirely reasonable. *Id.* Given the non-public nature of the

forum, this was within the State's right to do. *Id.* This Court also recognized that this was a way of keeping peace between school unions which, given the forum's purpose as a non-public school mail system, was reasonable and served a legitimate interest. *Id.* at 52. It was entirely within the forum's purpose for the State to use it in this way and thus reasonable. *Id.*

Similarly, *Cornelius* explained that restrictions in non-public fora are reasonable if a person "wishes to address a topic not encompassed within the purpose of the forum… or if [they] [are] not a member of the class of speakers for whose special benefit the forum was created." 473 U.S. at 806. Essentially, if a non-public forum's purpose does not include or anticipate a certain speech or speaker then that can indicate a reasonable restriction on that speaker. *Id.* However, this does not mean that so long as their speech is encompassed by the forum that they cannot be restricted because "[i]n contrast to a public forum, a finding of strict incompatibility between the nature of the speech… and the functioning of the non-public forum is not mandated." *Id.* at 809. Thus, when assessing reasonableness, constitutionality is dependent upon if the restriction is reasonable in light of the forum's dedicated purpose or use.

Cornelius also addressed a second important point regarding reasonableness when this Court focused on the government creating a method for charities to solicit donations from federal employees. *Id.* at 797. This non-public program restricted charities that influence politics from soliciting donations. *Id.* This Court held that a restriction in a non-public forum, such as this, "need *only* be reasonable." *Id.* at 808. More importantly though, this Court held that in these instances a restriction "need not be the most reasonable or the only reasonable limitation." *Id.* Furthermore, this Court held that in non-public fora there is no requirement that the restriction be narrowly tailored or that the Government's interest be compelling. *Id.* When looking at the donation system that the government set up, this Court found that the restriction on political charity solicitations

was reasonable because "the President could reasonably conclude that a dollar directly spent on providing food or shelter to the needy is more beneficial than a dollar spent on litigation that might or might not result in aid to the needy." *Id.* at 809. This Court's evaluation gave deference to the President, and because the President could reasonably conclude that this action would meet policy goals, it was sufficient to justify the reasonability of the entire restriction. *Id.* Similarly, this Court held that it was a reasonable restriction because it was reasonable for the government to want to avoid political favoritism for purposes of transparency. *Id.* Thus, restriction in a non-public forum is allowed so long as there is intelligible reasoning, and the restriction need not be the most reasonable nor the only reasonable limitation.

When applying this reasonableness standard to the transfer of Red Rock, it is clear that the transfer and the ensuing restriction of speech is reasonable in light of the purpose of the forum. It is entirely reasonable for Delmont to transfer the mining rights because restrictions in this non-public forum are "wholly consistent with the [State's] legitimate interest in '[preserving] the property . . . for the use to which it is lawfully dedicated….'" *Perry Educ. Ass'n*, 460 U.S. at 51. Just as the restriction in *Perry* was reasonable in light of the forum's circumstances because the mail system was always to be used as a non-public forum to aid bargaining representatives and promote labor stability, so too is the transfer of Red Rock's mining rights. *Id.* at 51-52. This is because in light of Painted Bluffs' purpose as a remote wilderness area with significant lithium deposits and infrequent religious demonstrations, it is entirely reasonable for Delmont to preserve the property for its lawfully dedicated use which can include transferring the rights to an incredibly valuable and environmentally friendly resource for ending fossil fuel dependency. R. 6, 9. Just because individuals have informally and infrequently used a non-public forum for speech does not mean that the forum is now traditionally public. In light of Red Rock's purpose, it is difficult to

conclude that Delmont cannot transfer the rights to a remote wilderness area that has important resources simply because people have used the land for another unintended purpose. As such, the transfer of Red Rock's mining rights is as reasonable as the restriction on use of the mail system in *Perry* because in both instances the action was reasonable in light of the forum's purpose. Here as a non-public remote wilderness area containing significant lithium deposits with no consistent history of being used for speech purposes, Delmont's actions would clearly be reasonable considering Red Rock's lawfully dedicated non-public purpose.

Furthermore, in *Cornelius*, this Court established that restrictions on speech in non-public fora need not be the most reasonable. 473 U.S. at 808. This Court found that the restriction on political donation solicitations was reasonable because it was reasonable for the President to conclude that disallowing donation solicitations by political charities would help to achieve the goals of this system, as well as to solve issues of political favoritism within government. *Id.* at 809. This Court's deferential analysis confirms that Delmont acted just as reasonably as the President in *Cornelius*. Given the circumstances regarding the minerals at Red Rock and Delmont's federal climate goals, the restriction clearly meets the established standard of reasonableness. Red Rock sits atop an extremely significant lithium deposit that is critical for Delmont to achieve its objectives under the ECIA. R. 6. Delmont has concluded that this was a reasonable enough action and should be given the same deference in their decision because there is no case in which the restriction must be the most reasonable and in fact it need *only* be reasonable. *Cornelius*, 473 U.S. at 808. Delmont's choice allowing mining at Red Rock is reasonable considering the national climate goals discussed and a lack of alternative technologies. R. 9. Furthermore, Delmont's analysis also shows that the economic impact would be a significant boost to the State's mining-dependent economy. *Id.* While these may not be the only or least restrictive justifications, Delmont

does not need to reach such a high threshold for reasonability in a non-public forum. *Id*. at 808. Considering Delmont's analysis and the deferential standard towards reasonability, the sale of Red Rock is clearly justified. Delmont's decision need not be the most reasonable nor the only reasonable option.

In non-public fora, free speech restrictions need only be content neutral and reasonable in light of the forum's purpose. Delmont's action is content neutral and reasonable because it is justified without reference to the speech and is reasonable in light of Red Rock's purpose.

II. The Free Exercise Clause is Not Applicable Here Because Delmont Did Not Coerce the Montdels Into Abandoning Their Religious Practices.

The Free Exercise Clause prevents the government from making laws that prohibit the practice of an individual's religion. However, the Free Exercise Clause does not "afford an individual a right to dictate the conduct of the Government's internal procedures". *See U.S. Const. Amend. 1*; *see also Bowen v. Roy*, 479 U.S. at 699-700 (1986) (where the court rejected a Free Exercise challenge to a federal statute requiring the States to use Social Security numbers in administering certain welfare programs). We acknowledge that the "ECIA" would place a burden on the Montdel group's ability to practice their religion; but, the Act does not violate the Free Exercise Clause because it does not (1) have a tendency to coerce individuals into acting contrary to their religious beliefs, and (2) penalize the Montdel group by depriving them of "an equal share of the rights, benefits, and privileges enjoyed by other citizens". *See Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 449 (1988) (holding the Free Exercise Clause was inapplicable to a challenge by Native Americans to prevent the government constructing a road through a sacredly held land).

A. The Free Exercise Clause is Not Applicable to This Claim Because the Government's Action Had No Tendency to Coerce the Montdel People to Perform an Act Contrary to Their Religion.

Absent coercion by the government to perform an act contrary to their religious beliefs, Montdel United are likely to be unsuccessful on their Free Exercise Claim. In *Lyng*, the United States Forest Service issued a statement that it would be constructing a road through the Chimney Rock area. *Id*. at 442. The Forest Service also adopted a plan that would permit timber harvesting in the Chimney Rock area. This area was traditionally used for religious purposes by the Yurok, Karok, and Tolowa Indians. *Id*. The Native Indians brought suit against the Forest Service alleging a violation of the Free Exercise Clause. *Id. at 443*. The Supreme Court held that the Free Exercise Clause did not prohibit the Forest Service from permitting timber harvesting and road construction in the Chimney Rock area. *Id*. at 450. In its reasoning, this Court stated that although the government's action may make it difficult for the native Indians to practice certain religions, the government's act does not have a tendency "to coerce individuals into acting contrary to their religious beliefs." *Id*. This Court further stated that the land belonged to the government, thus, the Indians' use did not preclude the government from using its own land. *Id*. at 452. Thus, the court held that although the act was not generally applicable because it only applied to the Chimney Rock area, the Free Exercise clause was not violated because the central ingredient for a Free Exercise claim was absent: there was no coercion by the government to perform an act contrary to their religion. *Id.*

Similarly, in this case, the Free Exercise Clause is not applicable here because the State of Delmont did not coerce the Montdel group into not performing their religious beliefs. Although the Montdel group used the Red Rock area to perform their religious rituals, the land still belongs to Delmont; and the Free Exercise Clause does not strip the Delmont of its rights to use its own

land. R. 3; *Lyng*, 485 U.S. at 454 (1988) (stating that "whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, its land"). Although the transfer would inhibit the Montdel group's religious practice, it would not coerce the Montdel group into acting contrary to their religious beliefs.

We acknowledge that the Montdel group will be affected by the transfer of land in the Red Rock area, however, the State's decision to transfer its own land does not violate the Free Exercise Clause. Although the land transfer would make it more difficult for the Montdel's observances, there is no government coercion, therefore the Free Exercise clause is inapplicable. *See Lyng*, 485 U.S. at 449-50 (1988) (holding that the Constitution's protection against government conduct prohibiting the free exercise of religion does not protect against the "incidental effects of governments programs, which may make it more difficult to practice certain religions, but which have no tendency to coerce individuals into acting contrary to their religious beliefs").

Montdel United might attempt to argue that the Free Exercise is applicable in this case because the transfer of the land would involve a physical destruction of Red Rock. However, such an argument is without merit. In *Lyng*, the Court rejected this distinction between the physical destruction of a sacred site and a subjective destruction. *Id*. at 449-50. The *Lyng* Court stated that the effect of the government's actions on an individual's religious practice, whether it interferes with the individuals'' subjective experiences or physically destroys a sacred land, should not be subjected to a different constitutional analysis. *Id*. Therefore, even though the effects of the transfer would lead to a destruction of the Red Rock area, it does not mean that it should be subjected to a different constitutional standard. R. 8. The standard is still the same: whether the action would coerce the Montdel group to perform functions contrary to their religion. *Id*. at 452. There is no coercion here, thus, the Free Exercise Clause is inapplicable.

B. The Free Exercise Clause is Inapplicable Because the ECIA Does Not Discriminate Against the Montdel.

Delmont did not violate the Free Exercise Clause by enacting the "ECIA" because the Act does not discriminate against the Montdel people or deprive them from enjoying a privilege enjoyed by all. *Lyng*, 485 U.S. at 453 (1988) (where the Court held that the Free Exercise Clause was not implicated by the government's Act to construct a road on a land considered sacred by Native Americans because the Act did not discriminate against the Native Americans or prevent them from visiting the area). For safety reasons, once mining begins, the ECIA would restrict everyone's access to Painted Bluff; the Montdel people are not the only ones who would be prohibited from visiting the Park. R.8. Members of the community who use the park for the equinox festivals would also have to relocate their celebrations. *Id*.

The Act does not target the Montdel people or discriminate against them. By claiming that the Act violates the Free Exercise Clause, the Montdel people are not seeking "an equal share of the rights, benefits, and privileges enjoyed by other citizens," but rather they are seeking a "religious servitude". *Id*. at 449. This religious servitude would prevent the government from using its own land as it sees fit. That would be contrary to the goals of the Free Exercise Clause: The Clause is not intended to help individuals in dictating to the government what it can use its land for, but rather to prohibit the government from coercing individuals into acting contrary to their religious beliefs. In the absence of coercion and discrimination from the government, Montdel does not have a valid Free Exercise claim.

An example of a governmental act which implicates the Free Exercise Clause due to discrimination can be found in *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.* 508 U.S. 520 (1993). In this case, the city issued an ordinance forbidding the slaughter of animals for religious sacrifice. *Id*. at 521. Slaughtering animals for sacrifice was practiced by the Santeria

religion, and the ordinance was passed after the Santeria church leased land in the city. *Id*. The Supreme Court held that the ordinance was discriminatory against the Santeria church in violation of the Free Exercise Clause because although other killings were permitted, such as hunting and fishing, the ordinance banned the specific type of animal killing practiced by the Santeria religion. *Id*. at 543. This type of discrimination is not the case here, the ECIA does not discriminate against the Montdel people. One-fourth of Painted Bluffs will be limited to all people, not just the Montdel group. R.8. Therefore, the ECIA does not discriminate against Montdel in a way that would implicate the Free Exercise Clause.

C. The Government Does Not Need to Pass Strict Scrutiny Because Even Though the Law is Not Generally Applicable, There is No Coercion, and the Free Exercise Clause is Inapplicable.

As established in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, under the Free Exercise Clause, if a law burdens religious practice, it must be justified by a compelling governmental interest unless it is neutral and of general applicability. 494 U.S. 872, 110 (1990). But, if the law is not neutral and of general applicability, it must undergo strict scrutiny. *Id*. This means that the government must show that (1) there is a compelling government interest to justify the law, and (2) the law is narrowly tailored to advance that interest. *Id*. Here, the Act to transfer the land in Painted Bluffs is generally applicable because the ECIA was enacted specifically to facilitate the transfer of the land in Painted Bluffs, including the Red Rock area. R. 7.

However, although the law is not generally applicable, the government does not have to show a compelling interest or that the interest is narrowly tailored because the central ingredient for a Free Exercise Claim–coercion–is absent. *Lyng*, 485 U.S. at 450 (1988) (where Congress adopted a statute to construct a road on a precise parcel of land after religious objections had been raised to the construction of the road, and the Supreme Court held that although the statute was

not generally applicable because "the central ingredient of a Free Exercise Claim–some tendency to coerce individuals into acting contrary to their religious beliefs"–was absent). Therefore, Delmont is not required to show strict scrutiny.

Although Delmont would not have to satisfy the elements of strict scrutiny because the Free Exercise Clause is not implicated here, Delmont can prove that it has a compelling interest for enacting the Act, and the Act is narrowly tailored to serve that interest. The purpose of transferring one-fourth of the land in Painted Bluffs State Park is to reduce fossil fuel dependency and boost the state's economy. R. 6. Through the mining of lithium, the state would be able to transition to lithium-ion batteries. R. 9. The ECIA is narrowly tailored to achieve this purpose because only the portion of the park with significant amounts of lithium is being transferred for mining. This constitutes just one-fourth of the land. Making use of its lithium rich soil is the only means through which the state can achieve its goal of reducing fuel dependency and boosting its economy.

CONCLUSION

For the forgoing reasons, Respondents, the State of Delmont and the DNRA, respectfully request this Court affirm the Fifteenth Circuit decision denying the preliminary injunction.

Respectfully Submitted,

/s/ Anonymous Attorney

/s/ Anonymous Attorney

Counsel for Respondent

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The work product contained in all copies of this team's brief is in fact the work product of the team members. The team has complied fully with their law school's governing honor code and the team has complied with all Competition Rules.