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 Court of Appeals for the Fifteenth Circuit

BRIEF FOR RESPONDENTS

Team No. 10
Counsel for Respondents

QUESTIONS PRESENTED

I. The Free Exercise Clause prevents the government from prohibiting the free exercise of religion. Yet legitimate, nondiscriminatory government decisions about how it will use its own land comport with the First Amendment, even if the decision renders a religious practice impossible. When a state decides to transfer government-owned land under state law to advance the state's environmental and economic objectives, does the state law and subsequent land transfer violate the Free Exercise Clause if the transfer also burdens a religious practice?

II. The Free Speech Clause limits but does not prohibit government decisions that affect expressive activity. Decisions that are neutral to an activity's content and based on legitimate reasons are likely constitutional. When a state decides to transfer government-owned land under state law to advance the state's environmental and economic objectives, does the state law and subsequent land transfer violate the Free Speech Clause if the transfer will also close a site previously used for expressive activity?

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The opinion of the District Court for the District of Delmont, Western Division, is unreported, but it is available at *Montdel United v. Delmont*, C.A. No. 24-CV-1982 (D. Del. 2024) and is in the record at 1–32. The opinion of the Court of Appeals for the Fifteenth Circuit is also unreported, but it is available at *Montdel United v. Delmont*, C.A. No. 24-CV-1982 (15th Cir. 2024) and is in the record at 33–45.

JURISDICTION

The District Court granted Montdel United's motion for a preliminary injunction under Federal Rule of Civil Procedure 65. R. at 32. The Court of Appeals reversed the District Court and denied the preliminary injunction. R. at 45. The Court then granted Montdel United's petition for a writ of certiorari. R. at 54-55. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First Amendment's Free Speech and Free Exercise Clauses, which state: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech . . .." U.S. Const. amend. I.

STATEMENT OF THE CASE

A. Delmont Identifies a Solution to a Significant Public Need

Delmont is in a quandary. As one of the largest states in the Union, it possesses mineral-rich geology that is conducive to mining. R. at 6. These mining activities are the engine that drives the state's economy. *Id*. The state's largest reserves of these metals and minerals lay beneath state-owned land, including Painted Bluffs State Park. *Id*. Unfortunately for Delmont,

the state does not have the expertise to extract these resources and must partner with private industry to put them to practical use. *Id*.

Delmont passed the Energy and Conservation Independent Act ("ECIA") several years ago to enable these partnerships. *Id*. The state intended the legislation to promote mining that would reduce the state's dependence on fossil fuels (per a federal mandate) while providing a much-needed jolt to the state's economy. R. at 6, 9. The ECIA allows the state to transfer land that it owns to private mining companies, provided it receives equivalent value in return. R. at 6. These transfers are subject to regulatory hurdles, including environmental and economic impact studies. *Id.* Two transfers attempted under the ECIA fell through for reasons including risks to endangered species and potential water contamination. R. at 9-10.

B. Delmont Authorizes the Red Rock Land Transfer

Delmont created Painted Bluffs State Park and the Red Rock area within its borders through eminent domain in 1930. R. at 4. The land consists of forested highlands and rock formations. *Id.* So challenging was the geography that early settlers chose not to make their homes there. *Id.* Twenty years ago, scientists determined that Red Rock contains the largest lithium deposit on the continent. R. at 7. This understandably drew the attention of mining companies that wanted to extract that lithium. *Id.* The ECIA allowed Delmont to pursue a land transfer that would make productive use of these resources. R. at 6. In 2023, the state agreed to transfer a quarter of the park, including Red Rock, to a mining company based in the state in exchange for land elsewhere in Delmont. R. at 7-8. Residents applauded this development, hoping the mine would diversify and grow the local economy. R. at 7. Previously, tourism was the major industry around the park, but the limited revenue it generated was unable to meet the area's needs. *Id.* Studies showed that the Red Rock lithium deposits were significantly larger than those involved in the canceled previous ECIA transfers. R. at 10.

Mining is rarely a pretty business. The environmental impact study revealed that the area formerly known as Red Rock would become a quarry filled with water because of the mining. R. at 8. That study also showed minimal expected impacts beyond Red Rock. *Id.* Any alternative mining approaches that might partly preserve Red Rock are still decades away from implementation. R. at 8-9. But Delmont weighed its options and approved the transfer. R. at 49.

C. Montdel United Objects to the Red Rock Transfer

Miners are not the only ones interested in Red Rock. Delmont is also the historical home of an Indigenous Native American group known as the Montdel. R. at 2. Various accounts place the Montdel in Delmont as early as 400 A.D. or at least as far back as the sixteenth century. *Id.* The Montdel population declined to a few thousand people in the nineteenth century, and most Montdel were scattered throughout other tribes and localities. R. at 3.

The remaining Montdel conduct a religious ceremony at Red Rock four times a year. *Id.* This ceremony, now known as the Montdel Observance (the "Observance"), involves crop sacrifice and group prayer. R. at 3, 5. According to the Montdel, this Observance is the only way for them to reach their Creator. R. at 3. The Montdel have practiced this ceremony with varying regularity and participation since before Delmont became a state in 1855. R. at 3. Others have joined in; over time, festivals have sprouted alongside the Observance, attracting spring breakers and festival fanatics alike. R. at 5. These festivals have frustrated public officials, including the governor, because of the need for cleanup after their conclusion. R. at 47. Delmont advertises the Observance for tourism and licenses vendors who sell goods at the festivals. R. at 52.

Several Montdel descendants were concerned when they learned of Red Rock's value to the mining industry. R. at 7. They formed a group known as "Montdel United" dedicated to opposing the use of Red Rock and Painted Bluffs for purposes that would conflict with the Observance, including mining. *Id*. The group met with the head of Delmont's Natural Resources

Agency to discuss their concerns. R. at 55. In that meeting, the head of the agency informed the group that the state approved the transfer as the best use for the state's natural resources. R. at 53. He added that the decision balanced the entire state's needs against Montdel United's. R. at 55.

D. Montdel United Seeks Injunctive Relief

Montdel United sought injunctive relief to block Delmont's transfer of Red Rock. R. at 10. The suit claimed Delmont violated the group members' First Amendment rights to free speech and free exercise by transferring the land to Delmont Mining Company under the ECIA. R. at 34. In turn, this transfer precludes the site's use for the Observance. *Id.* The District Court granted a preliminary injunction after finding the transfer infringed on both rights and Montdel United was likely to succeed on the merits. R. at 32.

Delmont appealed to the Fifteenth Circuit. R. at 33. The state argued that its decision to transfer the Red Rock area did not unconstitutionally infringe on Montdel United's rights. R. at 33. The appellate court agreed, reversing the trial court on the Free Speech and Free Exercise claims and denying the injunction. R. at 42, 45. It determined that Montdel United could not succeed on the merits because the transfer did not trigger strict scrutiny under the Free Speech or Free Exercise Clauses and the transfer was reasonable. R. at 45. Montdel United then petitioned for a writ of certiorari, which this Court granted. R. at 54-55.

SUMMARY OF THE ARGUMENT

The Court should affirm the Fifteenth Circuit's decision on both questions presented. Delmont engaged in a thorough review process and weighed the competing interests surrounding Red Rock. After that careful review, the state approved the transfer for nondiscriminatory reasons grounded in the state's economic and environmental objectives. The transfer does not infringe on either of the First Amendment rights Montdel United asserted.

Delmont's decision to transfer its own land does not offend the Free Exercise Clause. Not every burden on religion will give rise to a claim under the First Amendment. This is especially true when the burden stems from the government's lawful and legitimate internal decisions. Decisions like these are reviewed by this Court with a less exacting standard than other government action that burdens religion. For example, direct or indirect religious coercion is strictly scrutinized. So too are government-imposed penalties on the free exercise of religion. Neither is present here.

In this case, the purportedly unconstitutional action is Delmont's decision about what do with its own land. Heightened review of its decision is unwarranted. To be sure, the burden on Montdel United's ability to practice its religion is significant. But that alone does not change the inquiry. Even when the government's land-use decisions destroy one's ability to practice his religion, the First Amendment will not always supply the remedy. Without compulsion or discrimination—both of which are absent here—Delmont is entitled to discretion to handle its internal affairs, including land-use decisions.

Delmont exercised that discretion with care. Before entering into the transfer agreement at issue here, Delmont did its homework. It conducted scientific- and economic-impact studies of the area. It evaluated several proposals, each with advantages and disadvantages. And it consulted the surrounding communities and constituents. Ultimately, Delmont concluded that the Red Rock transfer was in the best interest of the state and its people. This Court is ill equipped to second-guess that conclusion.

Delmont's decision to transfer Red Rock was reasonable and is entitled to deference. The transfer is not coercive or discriminatory; it is the result of years of research and public debate. Delmont's well-reasoned decision about what to do with its own land is not conditional on

Montdel United's religious convictions, no matter how significant a burden the decision will have on its convictions. And so Montdel United's Free Exercise claim must fail.

Similarly, the Red Rock transfer does not unconstitutionally harm Montdel United's free speech rights. The government can close its own property to the public—even if citizens use it for expressive activity—so long as the closure is not based on that activity. Such closures are not First Amendment violations; the government could never close a location that hosted expressive activity if they were.

The analysis here could end with that principle. Delmont owns Red Rock and the surrounding state park. The state authorized the Red Rock transfer to further its environmental and economic priorities. These priorities justify the transfer and have nothing to do with the Observance. Thus, the transfer is content-neutral and therefore permissible.

The transfer also passes constitutional muster should the Court employ the public forum doctrine. Under the doctrine, government restrictions on speech must satisfy requirements based on whether the forum is a traditional public forum, designated public forum, or nonpublic forum. Speech restrictions in traditional and designated public forums must satisfy strict scrutiny, while restrictions in nonpublic forums need only be reasonable and content-neutral.

Red Rock is not a traditional public forum because it is not a necessary conduit in Delmonters' daily lives. Nor has Delmont taken intentional steps to make Red Rock a designated public forum. This means that if Red Rock is a forum, it must be a nonpublic forum. Closing Red Rock to expressive activity in favor of mining is a reasonable method of achieving Delmont's economic and environmental goals. These justifications apply regardless of whether Red Rock hosted expressive activity. Thus, the transfer passes review under the public forum doctrine.

Finally, even if Red Rock were a traditional or designated public forum, the transfer would not be subject to strict scrutiny because it qualifies as a time, place, or manner restriction. Such restrictions are permissible if they are content-neutral, narrowly tailored to serve a significant government interest, and allow for ample alternative speech channels. The closure is content-neutral, as discussed. It is also narrowly tailored because without the Red Rock transfer, the state's environmental and economic goals would be harder to achieve. Finally, Montdel United has ample alternative venues for expression. While the group would prefer to practice the Observance at Red Rock, it can still use areas within a few miles for similar purposes. The government need not provide citizens with access to their most desired venue for speech; it must only refrain from discriminating based on the speech itself. Thus, the Red Rock transfer satisfies every condition this Court's precedents require for government speech restrictions on time, place, or manner. This Court should affirm the Fifteenth Circuit because the Red Rock transfer does not infringe on either of the First Amendment rights Montdel United asserted.

ARGUMENT

I. The land transfer does not violate Montdel United's free exercise rights.

Montdel United does not have a viable claim under the Free Exercise Clause because their purported burden stems from a nondiscriminatory government land-use decision. The Free Exercise Clause, applicable to the states under the Fourteenth Amendment, prevents the government from "prohibiting the free exercise" of religion. U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). But the operative word is "prohibit." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988). The clause "is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Sherbert v. Verner*, 374 U.S. 398, 412 (1963) (Douglas, J., concurring). The First Amendment, therefore, protects against "governmental compulsion"; it affords no one "the right

to dictate" the government's internal decision-making. *Bowen v. Roy*, 476 U.S. 693, 700 (1986). Delmont's decision to transfer Red Rock was legitimate, and neither compulsory nor discriminatory. So Montdel United's Free Exercise claim cannot succeed under the First Amendment.

A. The land transfer is a legitimate government land-use decision that does not warrant heightened review.

This Court has long held that "[n]ot all burdens on religion are unconstitutional." *Id.* at 695. This holding has been consistently applied, though the test to define what counts as a constitutionally cognizable burden has been less consistent. Yet, on these facts, this Court's precedents are clear: Delmont's decision to transfer Red Rock for mining operations does not warrant heightened scrutiny on review.

This Court will not require the government to defend its internal decisions—particularly, its land-use decisions—with "a compelling justification for its otherwise lawful actions" unless the action have a "tendency to coerce individuals into acting contrary to their religious beliefs." *Lyng*, 485 U.S. at 450-51. To be sure, "[i]ndirect coercion or penalties on the free exercise of religion" may implicate the First Amendment and warrant heightened review. *Id.* at 450. But this case involves neither coercion nor penalties. Here, the land transfer is the valid exercise of Delmont's right to use and dispose of its own land as it sees fit—more specifically, as the people of Delmont, by way of their elected representatives, see fit.

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." *Roy*, 476 U.S. at 699. For example, when a parent argued that the government would violate his free exercise rights by using a Social Security Number to identify his daughter in a welfare program, his claim was "without merit." *Id.* at 695, 701. This Court explained that the government is "entitled to wide latitude" in its decision-making processes, especially when those decisions are "facially

neutral and uniformly applicable." *See id.* at 707. And so "absent proof of an intent to discriminate against particular religious beliefs," the government meets its burden on a Free Exercise Clause challenge by demonstrating that its decision is reasonable. *Id.* at 707-08.

This Court applied the same rule in *Lyng*. *See* 485 U.S. at 448-49 . There, the Court rejected a Free Exercise claim premised on a substantially similar government action as this case: a land-use decision about the government's own land. *See id.* at 453. In *Lyng*, the United States Forest Service adopted a plan to allow for timber-harvesting in a national forest. *Id.* at 442-43. It also planned to construct a road through a portion of the forest that was historically used by Native Americans for religious purposes. *Id.* The road construction would have made it impossible for the Native Americans to continue their religious practices, so they filed suit claiming a violation of the Free Exercise Clause. Yet this Court rejected their claims. *Id.* at 449.

The *Lyng* Court explained that, without some form of coercion or penalty, the government need not "bring forward a compelling justification" for the "otherwise lawful" decisions it makes about its own land. *Id.* at 450-51. Neither constructing the road nor permitting timber harvesting coerced the Native Americans into acting contrary to their religious beliefs. So the Free Exercise Clause provided no basis for the Native Americans to challenge the government's use of "what is, after all, its land." *Id.* at 453.

So too here. The land transfer does not coerce Montdel United into acting contrary to its religious beliefs, so it does not face a cognizable burden under the First Amendment. This is not to say that the land transfer will not burden Montdel United's religious practices. It will. The land transfer and the subsequent mining activities will prevent the Observance's continued practice, through which Montdel United believes it can access its creator. R. at 3, 8. But even when the

government's land-use decisions destroy one's ability to practice her religion, the Constitution will not always justify a remedy. *Lyng*, 485 U.S. at 451-52.

On these facts, *Lyng* controls. And *Lyng* remains good law despite other precedents having muddied the waters—namely, *Employment Division v. Smith*. 494 U.S. 872 (1990).

Smith is "fundamentally at odds" with this Court's view of the other "liberties guaranteed by the Bill of Rights." *Fulton v. City of Phila.*, 593 U.S. 522, 603 (2021) (Alito, J., concurring). *Lyng* is not. Even outside the free exercise context, this Court has "long held the view that there is a crucial difference, with respect to constitutional analysis, between the government" acting as a lawmaker and "the government acting . . . to manage its internal operation." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008) (cleaned up). This Court consistently reviews the latter with a less exacting standard. *See, e.g.*, *NASA v. Nelson*, 562 U.S. 134, 153 (2011) (rejecting the argument that the government bears a "constitutional burden to demonstrate that its questions [for a job-related background check] are "necessary" or the least restrictive means of furthering its interests."). This is true across an array of constitutional rights. *See, e.g.*, *O'Connor v. Ortega*, 480 U.S. 709, 721-22 (1987) (plurality opinion) (Fourth Amendment); *Bishop v. Wood*, 426 U.S. 341, 350 (1976) (Due Process Clause); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 599 (1968) (Free Speech Clause). So *Lyng* is not the "methodological outlier" that *Smith* is. *See Fulton*, 593 U.S. at 595. On the contrary, *Lyng* is consistent with this Court's broader constitutional jurisprudence.

The Court should thus reaffirm *Lyng* and hold that the legitimate internal government decisions about the disposition of property are not subject to heightened scrutiny under the Free Exercise Clause. In so holding, Montdel United's Free Exercise claim would be on its last leg.

B. The land transfer is reasonable and passes constitutional muster.

The "line between unconstitutional prohibitions on the free exercise of religion and the legitimate conduct by the government of its own affairs" cannot be exacted by "weighing the

effects of governmental action on a religious objector's spiritual development." *Lyng*, 485 U.S. at 451. And wherever that line may be, courts are ill-equipped to draw it. *Id.* at 452.

Government decisions must satisfy competing demands. How should Delmont weigh its commitment to carbon-neutrality against the loss of a beloved museum in the area? Will the revival of the local economy be worth the potential risk of water contamination? Is compliance with the federally mandated fossil fuel objectives more important than preserving the habitat of an endangered species? Does the minimal environmental impact on the other areas justify the destruction of Red Rock?

For over a decade, Delmont wrestled with these questions. R. at 7. The legislature evaluated several proposals to permit mining activities in Painted Bluffs State Park and around the Red Rock area. *Id.* And Delmont eventually considered several options for land transfer agreements—it proceeded with some and it canceled others. R. at 9-10. A myriad of economic, social, environmental, and cultural considerations drove these extensive deliberations. *Id.*

Federal, state, and local governments often make complex decisions like these. In many ways, the Red Rock transfer is emblematic of the pluralistic society the Founders envisioned. *See* The Federalist No. 10, at 79 (James Madison) (noting that "the principal task of modern legislation" is, in part, the regulation of "[a] zeal for different opinions concerning, religion, concerning government, and many other points."). "Competing demands on government" will "inevitably arise in so diverse a society as ours." *Lyng*, 485 U.S. at 452. And "[t]he Constitution does not, and courts cannot, offer to reconcile" these demands. *Id.*

This concern is particularly salient in the land-use context. The federal government alone owns about 650 million acres of land in the United States. Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* (2020). That

means the federal government controls nearly one-third of all land in the United States. *Id*. And that astounding figure does not include land owned by state and local governments.

Many citizens hold sincere spiritual connections to much of this public land. Yet federal, state, and local officials must make countless decisions every day about the use and disposition of the vast body of government-controlled acreage. Tension is inevitable: some decisions will be spiritually fulfilling for certain individuals, while the same decision will be offensive or detrimental to others' sincere religious beliefs. *Lyng*, 485 U.S. at 452. The government will struggle to "satisfy every citizen's religious needs and desires" with even the most minor land-use decisions. *Id*. And the Free Exercise Clause provides no such guarantee.

Today, the issue is Red Rock. But this Court's holding will reverberate across a broad swath of land-use decisions nationwide. A rule that respects the expertise of state and local governments would provide a workable framework for future judicial review.

The First Amendment prohibits the government from discriminating against religion; it protects individuals "from certain forms of government compulsion." *Roy*, 476 U.S. at 700, *see Fulton*, 593 U.S. at 533. Every government action, "no matter how innocuous" it may seem, could be "susceptible to a Free Exercise objection." *Roy*, 476 U.S. at 707 n.17. No one can have veto power over the government's internal affairs, including its land-use decisions. *Lyng*, 485 U.S. at 452. Otherwise, the "government simply could not operate." *Id.*

But a veto is functionally what Montdel United seeks. It would have this Court undo years of legislative debate, scientific research, and political calculations that worked their way through the democratic process, resulting in the reasonable decision to transfer government-owned land. If the Free Exercise Clause allows Montdel United to effectively claim title over

Red Rock—blocking the well-reasoned decision to transfer the land—anyone can stake a claim to any other government-owned piece of acreage under the ambit of the First Amendment.

Nor do these unique facts supply a limiting principle. The Observance dates back centuries, in some form or another. So the fear of "sacralizing the world," the argument goes, is unfounded because facts like these are doubtful to be replicated.

But this argument neglects a core principle of this Court's Free Exercise jurisprudence: Montdel United's religious beliefs would be no less sincere—no less worthy of constitutional protection—if the Observance began in 2024 rather than 400 A.D. *See Smith*, 494 U.S. at 876-77 ("[C]ourts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim."). So the duration of the practice is no limiting principle at all.

This Court has cautioned against legal tests under which "it would decide which public lands are central or indispensable to which religions, and by implication which are dispensable or peripheral." *Lyng*, 485 U.S. at 457 (internal quotations omitted). Such a test would anoint this Court as arbiter to "weigh the value of every religious belief and practice" that is threatened by any government land-use decision and decide which decisions "are compelling enough to justify infringement of those practices." *Id.* (internal quotations omitted). Such an approach to the First Amendment "would cast the judiciary in a role [it was] never intended to play." *Id.* at 457-58.

Delmont legitimately disposed of its own property pursuant to state law and federal mandates. The Red Rock transfer does not coerce Montdel United into acting contrary to its religious beliefs. Instead, the state legislature and surrounding community spent years studying and debating the economic, environmental, social, and cultural impact of the land transfer. Their conclusion? The Red Rock transfer is in the best interests of the community. Even though the

land transfer will prevent Montdel United from practicing its religion, Delmont's reasonable decision to transfer Red Rock does not violate Montdel United's free exercise rights.

II. The land transfer does not violate Montdel United's free speech rights.

Montdel United's objections to the transfer fare no better under the Free Speech Clause. Delmont's decision to transfer the Red Rock area to Delmont Mining Company does not implicate Montdel United's free speech rights for two reasons.

First, the property's sale is a government decision to close a forum to expressive activity. But not every closure amounts to a "law… abridging the freedom of speech… ." U.S. Const. amend. I. This closure triggers the Court's forum analysis doctrine to determine what level of scrutiny the transfer should receive. Forum analysis reveals that Red Rocks is neither a traditional nor a designated public forum. This means that government action to shut off the site to expressive activity must only be reasonable and neutral to the expressive activity's content. This transfer easily clears that bar. The land transfer achieves several important public purposes without reference to Montdel United's expressive activity.

Second, even if the Red Rock closure was subject to strict scrutiny, the closure is a constitutionally acceptable time, place, or manner restriction on expressive activity. The Fifteenth Circuit below correctly held that this sale did not violate Montdel United's free speech rights. This Court should affirm that decision, deny the injunction, and allow the land transfer.

A. The forum closure needs only be reasonable, and it is.

Red Rock may qualify as a forum because Montdel United uses it for expressive activity. But the mere fact that expressive activity occurs does not prohibit the government from closing a forum entirely. *See Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 699 (1992) (Kennedy, J., concurring); *see also Currier v. Potter,* 379 F.3d 716, 728 (9th Cir. 2004); *United States v. Bjerke,* 796 F.2d 643, 647 (3d Cir. 1986). Holding otherwise would hamstring the

government from disposing of property that had ever played host to expressive activity. Instead, this Court examines the forum and its nature to determine the appropriate level of scrutiny to apply to government action. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 44 (1983). If a forum does not meet the specific criteria of a traditional or a designated public forum, the government's action needs only be reasonable and content-neutral. *Id.* at 38. Red Rock is not a traditional or designated public forum, and its closure is for valid reasons unrelated to the Observance. Thus, Delmont's choice to close Red Rock clears this Court's scrutiny.

1. Red Rock is not a traditional public forum despite its location within Painted Bluffs State Park.

Traditional public forums are a narrow class. Only areas that have "historically been made available for speech activity" fit this category. *Lee*, 505 U.S. at 680. Sometimes, the catch-all "streets and public parks" is a convenient shorthand for traditional public forums. *See Frisby v. Schultz*, 487 U.S. 474, 480 (1988). But calling something a park does not make it a traditional public forum. Arbitrary naming decisions should not short-circuit this Court's analysis. Public areas—including parks— that are not "a necessary conduit" in the day-to-day affairs of local citizens are not necessarily traditional public forums. *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 651 (1981). Such is the case here.

Painted Bluffs State Park contains around 100 square miles of "forested highlands." R. at 2. Red Rock occupies a small part of the state park. *Id*. Early settlers avoided the area because of its challenging geography. R. at 4. The Observance occurs four times a year at most. R. at 39. Even then, world events have disrupted the Observance. R. at 4, 39. Montdel United presented no evidence that people use Red Rock for expressive activity other than during the Observance. The record lacks any evidence that people visit Red Rock at all unless the visit is part of the

Observance or the surrounding festivities. Such limited use hardly qualifies Red Rock as a "necessary conduit" in Delmont citizen's daily affairs.

The District Court assumed that parks fit squarely within the traditional public forum category. R. at 19. The appellate court rightly rejected this notion. R. at 38. True, some of this Court's precedents use the shorthand the District Court incorrectly applied. *See, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 464 (2009) ("a park is a traditional public forum for speeches and other transitory expressive acts"). But park (and traditional public forum) status was not dispositive in *Summum* as the government prevailed on other grounds. *Id*. at 481.

Montdel United cites *Grace v. United States* as prohibiting the destruction of public forum status. R. at 17; 461 U.S. 171, 180 (1983). But *Grace* is distinguishable from the facts here. In *Grace*, the government could not reclassify a public forum to limit expressive activity outside the Supreme Court. *Id*. at 177. The government still owned the sidewalk that comprised the public forum. *Id*. at 178. Here, the government is relinquishing its claim to the land in a transfer that has nothing to do with speech. This Court can clarify this distinction by recognizing the government's authority to close forums for non-pretextual reasons unrelated to speech. Regardless, Red Rock is not a traditional public forum, and therefore the reasons for its closure need not face strict scrutiny.

2. Delmont did not make Red Rock a designated public forum.

Montdel United's argument that Red Rock is a designated public forum also fails. The government can create designated or limited public forums that offer similar protections for expressive activity as traditional public forums. *See Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 555 (1975). It can then limit forum use to certain groups but not to particular viewpoints. *Widmar v. Vincent*, 454 U.S. 263, 268 (1981). The government must "intentionally open[] a nontraditional forum for public discourse" to create a designated public forum. *Cornelius v.*

NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 802 (1985). Governments do not create designated public forums by accident or acquiescence. *Id.*

Delmont has done nothing that would make Red Rock a designated public forum. Instead, the state's actions acknowledge that the Observance occurs, and nothing more. This acknowledgment is quite different from an intentional choice by the state to set up a public forum. For instance, the state referred to the Observance when marketing the park for tourism. R. at 4. Public officials noted that these practices occur. R. at 4-5. Due to the rising tourism, the state allowed vendors to sell food, music, and merchandise to those who visited the park for the observance and the surrounding festival activities. R. at 6.

These actions do not approach the intentionality needed to create a designated public forum. Compare the acknowledgment of the observance here with the university's actions in *Widmar*, 454 U.S. at 267. There, a university created meeting rooms that student groups could use, then chose to unconstitutionally exclude groups from that forum based on the speech they engaged in. *Id.* at 277. Delmont did not create Red Rock or invite the Montdel people to use it. R. at 2. Indeed, the Observance is perhaps centuries older than the 1930 origin of Painted Bluff State Park. R. at 2, 4. At most, Delmont inherited the Observance when it created the park and acquiesced by allowing the Observance to continue. Delmont's supportive reactions hardly qualify as the intentional choice to create a designated public forum.

3. Red Rock is a nonpublic forum.

Red Rock—as neither a traditional nor designated public forum—must be a nonpublic forum, if it is a forum. Citizens do not get unfettered "access to property simply because" the government owns it. *U.S. Postal Serv. v. Council of Greenburgh Civic Ass'ns,* 453 U.S. 114, 129 (1981). "Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property… ." *Cornelius,*

473 U.S. at 799-800. In nonpublic forums, access restrictions "need only be *reasonable;* [they] need not be the most reasonable or the only reasonable limitation." *Id*. at 808.

Of course, at first glance, a state park may not evoke the military bases or prisons often held up as examples of nonpublic forums. *See McDonough v. Garcia*, 116 F.4th 1319, 1328 (11th Cir. 2024) (citing *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11-12 (2018)). But this Court need not add another shortcut that relies on a name to place a forum in a public forum category. Once the Court decides that Red Rock does not fit the traditional or designated public forum requirements outlined above, the nonpublic forum category is the only one that remains. So Delmont's restrictions on the Red Rock forum need only be reasonable and not motivated by a desire to suppress speech. *See Ark. Educ. Tv Comm'n v. Forbes*, 523 U.S. 666, 678 (1998).

The access restrictions at issue here are reasonable under the circumstances. After the transfer, the planned mining activity will make the Red Rock site too dangerous to visit for years. R. at 8. No doubt the mining will transform Red Rock and limit its potential use for the Observance. Montdel United claims the transfer is unreasonable because it affects the Observance. But compelling economic and environmental reasons justify the transfer and resulting closure. R. at 2. Mining will serve as an economic catalyst for a region that is now struggling. R. at 7. The mine will also help the state diversify energy sources and reduce its dependency on fossil fuels. R. at 9. These justifications have nothing to do with the Observance. Both are reasonable grounds for limiting access to Red Rock. The result is that Delmont's land transfer and the closure of this nonpublic forum pass constitutional muster.

B. The transfer is a constitutional time, place, or manner restriction.

Even if Red Rock were a traditional or designated public forum, this Court can and should allow the land transfer to move forward without applying strict scrutiny. Delmont "is not required to indefinitely retain the open character" of Red Rock. *Cornelius*, 473 U.S. at 802

(internal citations omitted). Red Rock's closure as an expressive activity site is a reasonable time, place, or manner restriction. True, restrictions "that cannot be justified without reference to the content of the regulated speech" face strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). But time, place, or manner restrictions are constitutional if they "are justified without reference to the content of the regulated speech, … are narrowly tailored to serve a significant governmental interest, and … leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). The transfer meets each of these three criteria. The reasons for the transfer are indifferent to the prior use of Red Rock. The state's efforts to diversify its fuel sources and promote economic growth are narrowly tailored. And the transfer allows for alternatives for those who wish to continue the Observance.

The land transfer is content-neutral because it will prevent any use of Red Rock for expressive activity but does not close Red Rock *because* it hosted expressive activity. The appellate court below observed that "[e]ven if no expressive activity took place at Red Rock, those justifications for the state's closure of the forum would be unchanged." R. at 22. This conclusion adheres to this Court's precedents. *See Reed*, 576 U.S. at 164. Despite Montdel United's reliance on one official's offhand comments about the challenges of cleaning up after the Observance, the justifications for the transfer are compelling. Montdel United also argues that the state's approval of this transfer after it rejected previous alternatives shows hostility to the Observance. R. at 21. Not so. Delmont rejecting previous mining proposals shows that it undertook a deliberative process to balance competing interests. And unlike those proposals, mining at Red Rock had a workable environmental impact and the potential for sizable economic returns. These justifications continue to outweigh Montdel United's objections.

Narrow tailoring only requires that the government's objective would "be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799. The government's objectives—diversifying energy sources and promoting economic development—would be "achieved less effectively" without the ability to mine lithium naturally found at Red Rock. This Court has long recognized that economic development is a valid state interest. *See Kelo v. City of New London, Conn.*, 545 U.S. 469, 484 (2005). And unlike in *Kelo*, the state here has owned the land for nearly a century. There is broad local support from the people living near the site who currently depend on tourists' whims to fuel the region's economy. R. at 47-48.

The District Court below incorrectly rejected Delmont's rationale that mining lithium could help combat climate change, claiming it is "unlikely that the climate crisis will be resolved" by allowing mining at Red Rock. R. at 30. But the transfer does not need to cure the climate crisis to demonstrate narrow tailoring. "The First Amendment requires that [government action] be narrowly tailored, not that it be perfectly tailored." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 454 (2015). So Delmont need not prove that their chosen course will completely resolve the various ills it seeks to combat. Instead, Delmont must prove that its action will further the state's achievement of its valid interests. Mining at Red Rock will stimulate the local economy and provide another weapon in the state's arsenal against climate change. Both objectives would be harder to meet without the land transfer and the mining it facilitates. Thus, the land transfer is narrowly tailored.

The transfer does not prevent the Observance; it only requires that it occur in another place within Painted Bluffs. And the government need not access to the exact location desired for expressive activity. *See Frisby*, 487 U.S. at 484. "The fundamental right to speak secured by the First Amendment does not leave people at liberty to publicize their views whenever and however

and wherever they please." *Wood v. Moss*, 572 U.S. 744, 757 (2014). Montdel United can use any number of other sites to practice the Observance. Those who participate in the equinox festivals can do so at a site a few miles away from Red Rock but still within the confines of Painted Bluff State Park. R. at 8. This observation is not to minimize Red Rock's importance to the Observance or to diminish Montdel United's religious beliefs. Delmont must balance its people's competing interests. So long as Delmont's choice among those interests does not unconstitutionally infringe on protected rights, it can and should pursue the balance that the state determines best serves the people's needs.

Delmont's reasonable actions satisfy this Court's forum analysis doctrine because Red Rock is not a traditional or designated public forum. Moreover, even if Red Rock fell into those categories, the land transfer and the changes to the Observance driven by it are a time, place, or manner restriction that similarly passes constitutional muster. Thus, the land transfer does not infringe on Montdel United's First Amendment rights.

CONCLUSION

For all these reasons, this Court should affirm the Fifteenth Circuit.

CERTIFICATE OF COMPLIANCE

As counsel of record for the Respondents, we certify that:

1. The work product contained in all copies of this team's brief is in fact the work product of the team members.

2. Our team has complied fully with our law school's governing honor code.

3. Our team has complied with all competition rules.

Team 10
Counsel for Respondents