No. 24-CV-1982

In the
Supreme Court of the United States

MONTDEL UNITED,

PETITIONER,

v.

STATE OF DELMONT AND DELMONT NATURAL RESOURCES AGENCY,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIFTEENTH CIRCUIT

PETITIONER'S BRIEF

TEAM NUMBER 013
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1. Does the ECIA and subsequent transfer of Red Rock violate the First Amendment Free Exercise rights of Montdel United?

2. Does the transfer and destruction of the "Red Rock" landmark within Painted Bluffs State Park—Petitioners' sole channel to their God—violate Petitioners' First Amendment Free Speech rights by restricting the centuries-long religious expressive activity of the Montdel people?

OPINIONS BELOW

The Fifteenth Circuit's decision, entered November 1, 2024, is reported at *Montdel United v. State of Delmont and Delmont Natural Resources Agency,* No. 24-CV-1982 (15th Cir. 2024). R. at 33-45. The District Court's decision, entered March 1, 2024, is reported at *Montdel United v. State of Delmont and Delmont Natural Resources Agency,* No. 24-CV-1982 (Dist. Of Delmont 2024). R. at 1-32.

STATEMENT FOR THE BASIS OF JURISDICTION

This Court has jurisdiction to review the decision upon granting a Writ of Certiorari pursuant to 28 U.S.C. § 1254(1). The United States Court of Appeals for the Fifteenth Circuit entered final judgment in this matter in favor of Respondents on November 1, 2024. R. at 33-45. Petitioner timely filed a Petition for Writ of Certiorari, granted on January 5, 2025. R. at 55.

INTRODUCTION

Access to sacred sites like Red Rock is essential for Indigenous Tribes' religious practices and speech, yet the government has repeatedly hindered this access, often destroying these sites and denying First Amendment protections. Unlike the consistent upholding of secular religious rights, cases impacting Indigenous practices have perpetuated injustices. The Fifteenth Circuit's decision marked a new low by permitting the destruction of the Montdel people's only connection to their Creator. Red Rock, situated in Painted Bluffs State Park—a traditional public forum—has

been central to Montdel religious life for centuries. Delmont's proposed mining will permanently eliminate this sacred connection, with no compelling justification.

The Fifteenth Circuit improperly relied on *Lyng v. Northwest Indian Cemetery Protective Association***,** 85 U.S. 439 (1988). disregarding both constitutional protections and the congressional intent reflected in the American Indian Religious Freedom Act (AIRFA). Like *Lyng***,** this case fails rational basis and strict scrutiny, as Delmont's actions are neither neutral nor generally applicable under *Employment Division v. Smith***,** 494 U.S. 872, 110, (1990). Strict scrutiny requires that only a compelling state interest of the highest order can justify such burdens, and Delmont's speculative economic interests fall far short. The Court must reject *Lyng***,** apply the appropriate standard, and reverse the Fifteenth Circuit's decision, reinstating the district court's ruling to safeguard the constitutional rights of the Montdel people.

STATEMENT OF THE CASE

The Montdel people, an Indigenous Native American group, have practiced their religion at Red Rock for centuries. R. at 2-3. Red Rock is the most sacred site for the Montdel, who sincerely believe that the only way to connect with their Creator is through ceremonies at this unique location. R. at 3. The Montdel have consistently conducted their religious practices at Red Rock over the last century, and the state has never interfered. *R.* at 4.

In 1930, the state of Delmont acquired what is now established as Painted Bluff State Park through eminent domain—which "specifically site included Red Rock." R. at 4. The park is continually open to the public for camping, hiking, fishing, and other expressive activities. R. at 4. The Delmont people have conducted their religious practices at Red Rock, an area within Painted Bluffs, for over 500 years. R. at 4. The state has historically welcomed, promoted, and benefited from the Montdel's religious observances at Red Rock. R. at 4. In 1952, a spiritual

practice known as the "Montdel Observance" was formalized as an annual ritual at Red Rock. R. at 5. The state embraced this event, publicly honoring the practice with an executive proclamation from Governor Ridgeway. R. at 4-5. Ridgeway declared that the Montdel people had been "part of the land for centuries before there was ever a thought of such a thing as Delmont or even America. Their supplication to the Almighty in the Painted Bluffs is part of a legacy that the state proudly cherishes." R. at 4-5. The state profited from the Montdel Observance, simultaneously hosting an annual festival and issuing vendor licenses to distribute food, music, and merchandise through the Park Service. R. at 6.

This changed in 2022 when Delmont enacted the Energy and Conservation Act (ECIA). R. at 6. Although the act claimed to support sustainability and economic initiatives, its true aim was to destroy a state landmark that is also the spiritual heart of the Montdel people. R. at 6. The ECIA authorized the state to enter into land transfer agreements with private mining companies to extract valuable minerals. R. at 6. The Delmont Natural Resources Agency (DNRA) oversees these transfers. R. at 7.

In 2023, the DNRA agreed to transfer a quarter portion of Painted Bluffs State Park, including the sacred Red Rock area, to Delmont Mining Company, a private corporation. R. at 6. The proposal involves clearing and scraping the earth, blasting the rock, and processing the debris for mineral extraction. R. at 8. The environmental impact study confirms that this will result in the "total destruction" of Red Rock, transforming it into a waterlogged rock quarry. R. at 48. The "complete transformation" will render Red Rock "hazardous" and inaccessible, with "no possibility" of reclamation. R. at 48. This action will not only destroy this beautiful, historic landmark; it will devastate the Montdel people, denying them access to their Creator.

The destruction of this site will make Montdel's centuries-old religious practices and observances impossible. This looming tragedy caught the attention of Montdel United, whose mission is to "oppose the transfer of Painted Bluffs and safeguard Montdel Observances' religious site and ritual practices." R. at 7. Montdel United's President, Priscilla Highcliffe, met with Alex Greenfield, the head of the State Natural Resources Agency, to persuade the state to use alternative mining methods that would not completely destroy Red Rock. R. at 53. Highcliffe explained that Red Rock held sacred significance and that the state was "effectively outlawing religion by selling it to a private corporation." R. at 47, 53. Secretary Greenfield refused, stating, "We've tolerated these rituals for a long time…but the needs of…the state have to come first." Yet, two secular organizations have successfully opposed this same land use. R. at 28-29. The Governor also dismissed those concerns and described the corresponding festivals as a "nuisance." R. at 47. He prioritized "extracting the most minerals while keeping the majority of the park intact." *Id.* Indeed, the state entered into and later withdrew transfer agreements due to environmental objections from Citizens of Grove Flat and The Nature Conservancy. R. at 28. Montdel United contended that if the state granted exceptions for these secular objections, it must also grant an exception for a religious objection—but such concerns fell on deaf ears.

Determined to protect this sacred site from destruction, Montdel United filed suit in the United States District Court for the District of Delmont Western Division, seeking injunctive relief based on violations of the First Amendment's free speech and free exercise clauses. R. at 1. The court thoroughly reviewed the free speech claim, concluding that 1) Red Rock is a traditional public forum, 2) the land sale could not survive strict scrutiny, and 3) Montdel United was likely to succeed on the merits of the free speech claim. R. at 16, 25. Concerning the free exercise claim, the court found that 1) the imminent destruction of Red Rock presented a substantial burden on

religious free exercise, 2) the law was not generally applicable under rational basis review, 3) the state failed strict scrutiny for lack of a compelling interest, and thus 4) Montdel United was likely to succeed on the merits. R. at 27, 29, 31. Lastly, the district court determined that Montdel United faced irreparable harm, the balance of equities favored the plaintiff, and the injunction served the public interest. R. at 31-32. As a result, the court granted a preliminary injunction.

On appeal, the Fifteenth Circuit reversed and denied the preliminary injunction. R. at 45. The court concluded that 1) the appellees were unlikely to succeed on the merits of the free speech claim and 2) the free exercise claim was outright denied. R. at 42, 45. Montdel United now seeks an appeal. R. at 54. We urge this Court to reverse the Fifteenth Circuit's decision and reinstate the district court's ruling.

SUMMARY OF ARGUMENT

Of all the rights granted by the Constitutional Amendments, the rights to free speech and free exercise of religion are the first and most fundamental. The Fifteenth Circuit's reversal of the District Court's well-reasoned decision—which upheld those scared rights for the Montdel people—fails for at least three reasons. *First,* the hybrid free speech and free exercise claims, under the law, mandate strict scrutiny, but the Fifteenth Circuit erroneously applied a rational basis review, which was also not met. *Second,* parks like Painted Bluffs, including their landmarks like Red Rock, are traditional public fora, where the government's right "to limit expressive activity [is] sharply circumscribed," implicating violations of the most sacred right of free speech if erroneously applied. *Perry Educ. Ass'n,* 460 U.S. at 45. *Finally,* though the Free Exercise Clause of the First Amendment demands rigorous protection against government actions that burden religious expression, the Fifteenth Circuit conducted only a flawed rational basis review, improperly relying on *Lyng v. Northwest Indian Cemetery Protective Association* 485 U.S. 439

(1988), which should be overturned.

The government faces a heavy burden before limiting the fundamental right of free speech and expression—particularly religious expression. The burden is magnified in parks like Painted Bluffs State Park, and landmarks within them like Red Rock—traditional public fora, which "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. CIO*, 307 U.S. 496, 515 (1939). While the district court correctly concluded that preventing the Montdel people from communicating with their only Creator was impermissible, the Fifteenth Circuit dismissed this sacred site as comparable to a "remote wilderness area" too dissimilar to a city street to warrant protection as a traditional public forum. Yet, upon examination, the law cited by the Fifteenth Circuit supports Montdel's position that Red Rock—a place which "by long tradition" has been "devoted" to assembly and expressive activity—undoubtedly qualifies. *Perry Educ. Ass'n*, 460 U.S. at 45. Red Rock was so significant for expressive activity that the "Montdel Observance" was formalized by proclamation, promoted as a central part of the park's historic significance, and monetized with complementary secular activities in celebration.

The land transfer authorized under the ECIA results in the destruction of the most sacred site of the Montdel people's religious practice, violating their First Amendment Free Exercise rights. The Fifteenth Circuit incorrectly relied on the flawed *Lyng* decision. In *Lyng,* the Court misapplied *Bowen v. Ro*y, 476 U.S. 693 (1986), disregarding 1) rational basis review, 2) clear congressional intent, and 3) the plain textual meaning of the First Amendment. For these reasons, *Lyng* is irreparably flawed and should be overturned. The Fifteenth Circuit also relied on *Smith*, 494 U.S. 872, calling for rational basis review. This case fails even a rational basis review because

the ECIA was not applied uniformly, targeting a specific site and making exceptions for secular but not religious concerns. Additionally, this case fails to withstand strict scrutiny because the state's primarily financial interest is not compelling, and destroying a historical sacred site is clearly not a narrowly tailored approach using the least restrictive means. The Fifteenth Circuit's application of faulty precedent to deny the existence of a constitutional claim imposes further harm on a historically disempowered group and undermines the principles of religious liberty. The circuit court's decision should be reversed, and the district court's ruling reinstated.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a refusal to issue a preliminary injunction for abuse of discretion. *AK Futures LLC v. Boyd Street Distro, LLC,* 35 F.4th 682, 688 (9th Cir. 2022). However, "underlying legal conclusions de novo" and its "factual findings for clear error." *Id.* Legal determinations, including constitutional rulings, are also reviewed de novo, as are mixed questions of law and fact that implicate constitutional rights. *Berger v. City of Seattle,* 569 F.3d 1029, 1035 (9th Cir. 2009). Where, as here, the key "issues aris[e] under the First Amendment," this Court may independently review the facts. *Id.* Where claims are raised under the First Amendment, the Court has "an obligation to make an independent examination of the whole record." *Clear Channel Outdoor, Inc. v. City of New York,* 594 F.3d 94, 103 (2d Cir. 2010).

II. THE ECIA AND LAND TRANSFER OF RED ROCK RESULTS IN THE "TOTAL DESTRUCTION" OF A SACRED SITE, DIRECTLY PROHIBITING THE FREE EXERCISE RIGHTS OF MONTDEL UNITED.

A. THE FIFTEENTH CIRCUIT'S RELIANCE ON *LYNG V. NORTHWEST INDIAN CEMETERY PROTECTIVE ASSOCIATION* WAS ERRONEOUS.

The Supreme Court's decision in *Lyng v. Northwest Indian Cemetery Protective Association* marks a significant departure from established Free Exercise Clause jurisprudence. 485 U.S. 439 (1988). By misinterpreting the precedent set in *Bowen v. Roy,* 476 U.S. 693 (1986),

the *Lyng* Court neglected to apply meaningful scrutiny to the government's actions, undermining fundamental religious freedoms. This flawed decision contradicts congressional intent (specifically the American Indian Religious Freedom Act, AIRFA) and the spirit of the First Amendment. The *Lyng* precedent inevitably perpetuates the tragic history of disenfranchisement for Native Americans and represents a foreclosure of their religious freedom.

1. Fundamental Constitutional Rights Have Historically Required Strict Scrutiny.

In 1938, Justice Stone famously expounded in footnote four of *United States v. Carolene Products Co.*- that regulation aimed at fundamental rights, the operation of the political process, and disadvantaged minorities must be viewed with more scrutiny and subjected to stricter review. 304 U.S. 144, 152, n.4 (1938).

In 1963, *Sherbert v Verner* established a strict scrutiny standard of review for cases concerning government infringements on individuals' rights to practice their religion. 374 U.S. 398 (1963). The Sherbert Balancing Test mandates that First Amendment claims imposing a substantial burden on religious freedom must prove a compelling state interest and be narrowly tailored, including using the least restrictive means. *Id.* In support of strict scrutiny, Justice Brennan asserted that when regulations burden religious freedoms, the conduct regulated has "invariably posed some substantial threat to public safety, peace or order." *Id.* at 40, citing *Jacobson v. Massachusetts,* 197 U.S. 11 (1905) (compulsory vaccination); *Prince v. Massachusetts,* 321 U.S. 158 (1944) (child labor); *Cleveland v. United States,* 329 U.S. 14 (1946) (polygamy). In the absence of these threats to the public, strict scrutiny remained the standard of review for First Amendment claims.

In 1986, *Bowen v. Roy* shifted away from the *Sherbert* Test. 476 U.S. 693 (1986). Instead, the *Bowen* Court employed a rational basis test requiring only neutrality and general applicability. *Id.* at 707–08. This more lenient standard of review was designed for limited applicability as a solution for cases involving large-scale government agencies. *Id.* In 1988, *Lyng* was decided,

relying almost exclusively on *Bowen*. *Id.* Two years later, in *Employment Division, Dep't of Human Resources of Oregon v. Smith,* 494 U.S. 872, 110, (1990), the Court formally abandoned the strict scrutiny standard for generally applicable and neutral laws..

In the present case, the Fifteenth Circuit used *Lyng* and *Smith* to deny the petitioner's Free Exercise claim. This is improper for two reasons. First, *Lyng* is fundamentally flawed because the Court misinterpreted *Bowen.* Second, under *Smith,* the respondents fail to pass scrutiny - rational basis or otherwise.

2. Misapplication of *Bowen v Roy* Led *Lyng* to Circumvent Strict Scrutiny.

Bowen addressed a specific administrative requirement—the use of Social Security numbers—that did not significantly hinder religious practices. In fact, the Court emphasized that this ruling applied only to government actions that do not substantially burden religious exercise. *Bowen,* 476 U.S. at 699–700. The Court explained that strict scrutiny was unnecessary *in this context:* "In the enforcement of a facially neutral and uniformly applicable requirement for the administration of welfare programs reaching many millions of people, the Government is entitled to wide latitude." *Id.* Traditionally, the Court has allowed latitude only in cases where the government's interest far outweighed the imposed burden. "The state may justify a limitation on religious liberty by showing that it is *essential* to accomplish an *overriding* governmental interest" (emphasis added) *Id.* at 729 (quoting *United States v. Lee,* 455 U.S., at 257–258.). The *Lyng* Court improperly extended this rationale to justify the targeted destruction of lands integral to Indigenous religious practices. Unlike the large-scale administrative concern in *Bowen*, the targeted land-use decision in *Lyng* directly prohibited religious practice by undermining the sacred nature of the site. In the present case, allowing the Red Rock land transfer will not undermine the site's sacred nature but *devastate* it. The proposed state action will make it impossible for the Montdel people to

practice their religion, as Red Rock has been a central part of their religious ceremonies and observances for centuries. R. at 2-3.

In *Lyng*, the Court improperly applied *Bowen* rather than relying on the more relevant precedents of *Sherbert* and *Yoder.* In *Sherbert,* the Supreme Court emphasized the importance of protecting First Amendment claims, concluding that only a compelling state interest could justify burdening religious practices. *Sherbert,* 374 U.S. at 398. The Court noted, "no showing merely of a rational relationship to some colorable state interest would suffice" and emphasized that only "the gravest abuses, endangering paramount interests, give occasion for permissible limitation" *Id.* Similarly, in *Yoder*, the Court asserted that a state regulation, though neutral on its face, could violate the requirement for governmental neutrality if it unduly burdens the free exercise of religion. *Wisconsin v. Yoder,* 406 U.S. 92 (1972). In that case, Amish parents argued that enforcing Wisconsin's compulsory education law would significantly harm their religious beliefs. The Court upheld their claim, stating, "Only those interests of the highest order…can overbalance legitimate claims to the free exercise of religion" *Id* at 215. Here, the State of Delmont's interests are primarily economic and fail to rise to "interests of the highest order."

The traditions established in *Sherbert* and *Yoder*, which protect individual liberties against state regulations, are more applicable to the *Lyng* case than *Bowen,* which addresses religious exemptions from large-scale government administrative programs. The Court's choice to prioritize *Bowen* over *Yoder* and *Sherbert* demonstrates a strained interpretation of the law, leading to an unjust outcome. Likewise, in this case, the principles of constitutional protection should prevail over state economic interests.

3. *Lyng* Neglected Any Scrutiny, Opting for an Overly Restrictive Interpretation of "Prohibit" to Dismiss a Constitutional Claim.

The *Lyng* Court cited *Bowen* as a pretext to discard strict scrutiny but neglected to apply the rational basis review *Bowen* dictated. In *Bowen,* the Court established that the government satisfies its obligation when it shows that a neutral and uniformly applied requirement reasonably advances a legitimate public interest. *Bowen,* 476 U.S. at 707–08. Despite *Bowen*'s call for a rational basis review, the *Lyng* Court neglected to apply any level of scrutiny.

Instead, the Court opted for a strict textual interpretation of the Free Exercise Clause. A straightforward reading indicates that "prohibit" means to deny or prevent. However, the Court narrowly defined "prohibit" as only coercive actions compelling individuals to violate their beliefs. *Lyng,* 485 U.S. at 448–49. This restrictive view ignores the broader protections of the Free Exercise Clause, which safeguards against direct and indirect coercion, *in addition to* outright prohibitions on religious practice, as confirmed in *Yoder* and *Verner.* Buried in its opinion, the Court described coercion as a *form* of prohibition, emphasizing that "indirect coercion or penalties on the free exercise of religion, *not just outright prohibitions,"* (emphasis added) *Id.* at 450-51. The constitutional text does not require or imply a severely restrictive interpretation of "prohibit." Nevertheless, the *Lyng* Court circumvented scrutiny altogether by adopting a strict textual approach, ultimately dismissing the existence of a constitutional claim. This overly narrow interpretation set a troubling precedent by downplaying the protections intended for free religious practice.

4. *Lyng* Disregards *Bowen's* Respect For the Clear Congressional Intent to Protect Indigenous Religious Practice, as Reflected in the American Indian Religious Freedom Act (AIRFA).

Although the *Lyng* decision relies almost exclusively on *Bowen,* the Court failed to recognize that the opinion clearly distinguishes between its general application and cases concerning Native Americans' religious liberties. Notably, the *Bowen* Court praised the AIRFA as

a model of Free Exercise protection. Chief Justice Burger, writing for the majority, implored, "Congress passed a Joint Resolution concerning American Indian religious freedom that guides with respect to this case…The Resolution provides:

> On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." 42 U.S.C. § 1996.

That Resolution—with its emphasis on protecting the freedom to believe, express, and exercise a religion—accurately identifies the mission of the Free Exercise Clause itself." *Bowen,* 476 U.S. at 700–01. This Court never intended the *Bowen* decision to be used to strip Native Americans of their Free Exercise rights. Sadly, that is precisely what occurred, showing why *Lyng* is fundamentally flawed. The denial of the Montdel's claim is collateral damage.

B. DELMONT'S ACTIONS FAIL UNDER *SMITH*'S RATIONAL BASIS REVIEW AND STRICT SCRUTINY.

The Fifteenth Circuit concluded that *Smith* controls the present case. Under *Smith,* a law that burdens religious practices may be deemed constitutional if it is both neutral and generally applicable. 494 U.S. 872. The State of Delmont's actions fail the general applicability requirement for two reasons: 1) The state treats secular and religious interests unequally, and 2) targets a specific tract of land.

Since enacting the Energy and Conservation Independence Act (ECIA), the state has failed to apply the act uniformly. The Delmont Natural Resources Agency (DNRA) has withdrawn multiple land-use applications due to secular objections, while accommodations for the Montdel's religious practices at Red Rock have been denied. R. at 7. Two agreements were canceled due to environmental objections from the Nature Conservancy and Citizens of Grove Flat, both secular organizations. R. at 28–29. This unequal treatment recalls the circumstances in *Church of Lukumi*

Babalu Aye, Inc. v. City of Hialeah, where ordinances affecting Santeria practices were struck down due to the city's preferential exemptions for secular activities. 508 U.S. 520 (1993). Likewise, Delmont's actions demonstrate a lack of neutrality and general applicability here, as exceptions are made for secular concerns but not religious practices.

Similarly, in *Fulton v. City of Philadelphia,* the court recognized that *Smith* allowed for neutral and generally applicable laws that incidentally burden religion to avoid strict scrutiny. 593 U.S. 522 (2022). However, the Court concluded that policies allowing for discretionary exceptions cannot be considered neutral or generally applicable and must face strict scrutiny. *Id.* "A law is not "generally applicable," for purposes of determining whether the law is subject to strict scrutiny under the Free Exercise Clause if it invites the government to consider the particular reasons for…conduct by providing a mechanism for individualized exemptions." *Id.* The State of Delmont's selective application of the law fails to satisfy general applicability and imposes a disproportionate burden on the Montdel people, triggering strict scrutiny.

Additionally, the state's decision to single out Red Rock within Painted Bluffs demonstrates a nonuniform application of the ECIA. This targeting of a specific land parcel parallels the Congressional carve-out in *Lyng*, which was deemed not generally applicable. As noted in *Lyng,* the California Wilderness Act was considered neither neutral nor generally applicable due to its specific exemption for a "narrow strip of land." *Lyng,* 485 U.S. at 444, *Apache Stronghold v. United States,* 101 F.4th 1036, 1053 (9th Cir. 2024). Both *Lyng* and the present case fail rational basis review, making strict scrutiny necessary.

Applying strict scrutiny enables the Court to balance government interests with individuals' fundamental rights. In this case, singling out and destroying historic, sacred sites like Red Rock substantially burdens Montdel's religious practices. While the state's interest in economic

development is important, it does not outweigh the irreparable harm to religious liberty. Alternative solutions are feasible, such as delaying the project until sustainable mining technologies become available. It is in the public's best interest for the state to prioritize religious liberty and free exercise over immediate financial gains. Thus, the state's actions lack justification under strict scrutiny. The District Court's decision should be reinstated.

C. OVERRULING *LYNG* UPHOLDS CONSTITUTIONAL INTEGRITY AND SOCIETAL VALUES.

The Supreme Court has a long history of overturning precedents based on flawed reasoning. As our societal values evolve to better align with constitutional principles, so does the law. As in landmark decisions such as *Brown v. Board of Education*, 347 U.S. 483 (1953), *Obergefell v. Hodges,* 576 U.S. 644 (2015), and *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215 (2022), this Court is must recognize and correct past mistakes rather than repeat them.

In 1954, the Court overruled *Plessy v. Ferguson*, 163 U.S. 537 (1896), recognizing the "separate but equal" doctrine was fundamentally inconsistent with the Constitution. *Brown,* U.S. 347 U.S. at 74. In 2015, the Court acknowledged that denying same-sex couples the right to marry violated constitutional guarantees of liberty and equality. *Obergefell,* 576 U.S. 644, The Court declared, "If rights were defined by who exercised them in the past, then received practices could serve as their own continued justification…This Court has rejected that approach." *Id.* These decisions illustrate the Court's role as a defender of rights, particularly for marginalized groups such as Native Americans. In 2022, the Court overruled *Roe v Wade,* 410 U.S. 113 (1973), reasoning that *"*Stare decisis is not an inexorable command, and it is at its weakest when the Supreme Court interprets the Constitution" *Dobbs,* 597 U.S. at 142. The Court lamented that when it misinterprets the Constitution, it usurps the people's will. *Id.* So, the Court "must maintain the

power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken." *Id.*

Just as the Court addressed injustices in *Brown*, *Obergefell,* and *Dobbs,* it must now reconsider *Lyng*. The destruction of sacred lands like Red Rock represents an ongoing violation of First Amendment rights and a failure to uphold the principles of religious freedom. Applying a fundamentally flawed precedent to this case adds insult to injury for the Montdel people. Justice requires that *Lyng* be reversed.

III. THE STATE'S RESTRICTIONS TO THE MONTDEL'S CENTURIES-LONG EXPRESSIVE ACTIVITY DEMOLISHES PETITIONERS' FIRST AMENDMENT FREE SPEECH RIGHTS.

When our forefathers amended our Constitution, the very first of its protections was to prohibit any law "abridging the freedom of speech." *U.S. Const. Amend. I.* The Fourteenth Amendment extends these sacred First Amendment protections to the States. *Gitlow v. New York,* 268 U.S. 652, 666 (1925). Where this Court has held that the First Amendment bars the application of a neutral, generally applicable law to religiously motivated action, Free Exercise Clause claims have been asserted in conjunction with other constitutional protections, such as freedom of speech. *Smith*, 494 U.S. at 881–82. Such "hybrid" cases have been recognized nationwide as necessitating a "strict scrutiny" analysis, *Redlich v. City of St. Louis*, 550 F. Supp. 3d 734, 762–63 (E.D. Mo. 2021), aff'd, 51 F.4th 283 (8th Cir. 2022).

The extent to which the Government may limit expressive activity on its property "depends on whether the forum is public or nonpublic." *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 797 (1985). While the government has the right to impose limitations in "limited" or "nonpublic" fora, traditional public fora—like parks—are entitled to the greatest protection as being held in trust for the use of the public for purposes of assembly, communicating thoughts

between citizens, and discussing public questions. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n,* 460 U.S. 37, 45 (1983). Legislative and executive actions in this country also make clear that religious speech—particularly at sacred sites—must be preserved and protected. Here, the Fifteenth Circuit dismissed these basic principles to erroneously find that a landmark within a public park, which housed the most sacred of sites for the Montdel people for centuries, was undeserving of protection. That error must be reversed.

A. THE TRANSFER OF THE RED ROCK LANDMARK WITHIN PAINTED BLUFFS STATE PARK CONSTITUTES CLOSURE OF A TRADITIONAL PUBLIC FORUM--DEMANDING STRICT SCRUTINY AND HEIGHTENED PROTECTION FOR SPEECH.

In traditional public fora, "the government's ability to permissibly restrict expressive conduct is very limited." *United States v. Grace,* 461 U.S. 171, 177 (1983). There, First Amendment protections are strongest, and regulation is most suspect. *Grossman v. City of Portland,* 33 F.3d 1200, 1204 (9th Cir.1994). As public fora have achieved special legal status, the government "must bear an extraordinarily heavy burden to regulate speech" there. *N.A.A.C.P., W. Region v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984). The government's right "to limit expressive activity" therein is "sharply circumscribed." *Perry,* 460 U.S. at 45.

Public places historically associated with the free exercise of expressive activities, such as parks, are generally considered public forums. *Grace*, 461 U.S. at 177. Such free and open forums "have immemorially been held in trust for the use of the public" and "used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague,* 307 U.S. at 515. The public's lack of property rights in a park is not determinative of whether their right to expression in that forum may be abridged. *Badoni v. Higginson*, 638 F.2d 172, 176 (10th Cir. 1980). The government must manage its property so as not to offend the Constitution. *Id.*

The district court, being in the only position to receive evidence and testimony and weigh credibility, recognized this reality. R at 12-13. It emphasized the Montdel's 500-year tradition of performing supplicatory prayer at Red Rock—300 years before Delmont was established as a state and 400 years before the Delmont acquired the area through eminent domain. R. at 4, 16. In the opening ceremony for the park, the Governor's proclamation specifically acknowledged that "the state proudly cherishes" the Montdel's supplications to the Almighty at Red Rock. R. at 5. As the district court noted, such religious expression "constitutes the longstanding existence" at Red Rock of activity involving "communicating thoughts between citizens and discussing public questions." *Perry*, 460 U.S. at 45.

The Fifteenth Circuit misapprehended the law and misconstrued crucial facts in determining that Painted Bluffs State Park and Red Rock are not traditional public fora. *First*, citing *Boardley v. U.S. Dep't of Interior,* 615 F.3d 508 (D.C. Cir. 2010), Delmont argued that while Painted Bluffs is a park, Red Rock is not a part of it, but a "remote wilderness area" which has "never been dedicated to free expression and public assembly." R. at 14.The district court rejected that argument. *Boardley* stated that the "dispositive question is not what the forum is called, but what purpose it serves, either by tradition or specific designation." In most cases, "a determination of the nature of the forum would follow automatically from this identification." *Frisby v. Schultz,* 487 U.S. 474, 480 (1988). After all, a park is a park, and a "particularized inquiry into the precise nature" of the forum is unnecessary. *Id.* at 108. (R. at 13)

The record does not support the Fifteenth Circuit's conclusion, because Red Rock is undeniably part of Painted Bluffs State Park, and is open to—and invites—the public to gather and share ideas. When the area was established as Painted Bluffs State Park in 1930, the designation specifically "included the Red Rock site." R. at 5. The public had opportunities to camp, hike, and

fish along. Courts have repeatedly held that areas with such amenities were traditional public fora. From the day the park was established, the Montdel people gathered at its Red Rock landmark for their religious expressive activity. *Id.* The evolution to the "Montdel Observance" formal pilgrimages, were promoted by Delmont and drew thousands of visitors annually. R. at 5-6. Further evolution led to large festivals, held just a mile from Red Rock for the last 20 years, engaging in crafts, signing, and speeches, and share ideas. R. at 5-6. Those facts are incompatible with a "remote wilderness area," and the Fifteenth Circuit's conclusion that Red Rock has "never been dedicated to free expression and public assembly" is clearly erroneous.

Second, isolating one sentence from the background that the region "renowned for its striking rock formations" was originally acquired by the state "with the intent to preserve its natural beauty," the Fifteenth Circuit suggested that Delmont "did not intentionally open Red Rock as a forum for public discourse." *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802 (1985). R. at 37. But it again misapprehends the facts and misstates the law, as a traditional public forum is defined by its objective characteristics, not by governmental intent or action. *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 678, (1998). For at least 20 years, Delmont promoted the Montdel Observance and the significance of the Montdel people to increase its own tourism. R. at 6. It licensed vendors for festivals, fishing, crafts, hiking, and other activities at or around Red Rock, inviting thousands of people annually to join its festivities. *Id.* If the Fifteenth Circuit believes that the park's purpose was to "preserve its natural beauty," turning Red Rock into a flooded, unreachable quarry certainly does not achieve that goal.

Traditional public fora are places which "by long tradition" or government fiat have been devoted to assembly and debate. *Perry Educ. Ass'n,* 460 U.S. at 45. "Public open spaces" such as parks are distinguished from streets because their use for expressive activities rarely implicates

other important governmental interests. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1295 (11th Cir. 2021). The issue is not whether certain areas of a park are too distinct to be included, but whether they are indistinguishable from other sections of the park "in terms of visitors' expectations of its public forum status." *Gerritsen v. City of Los Angeles,* 994 F.2d 570, 576 (9th Cir.1993). In that case, the Ninth Circuit concluded that distinct and less traveled areas of a park, for First Amendment forum purposes, constituted a public forum. *Id.* While distinct from other portions of Painted Bluffs, Red Rock has undeniably hosted traditional assemblies and has been used for expressive activity for centuries. Red Rock was a forum for public discourse—open to the Montdel people or anyone who chose to enjoy it—long before Painted Bluffs existed, and it continued long after.

Finally, Delmont argued that Red Rock was not a traditional public forum because the Montdel's expressive activity was limited and sporadic. But the case they cite, *Heffron v. Int'l Soc. for Krishna Consciousness,* 454 U.S. 640, 654 (1981), supports Petitioners, as Red Rock (like the public street) is continually open but often uncongested, as distinguished from fairgrounds which are congested but only open for a short time and thus not traditional public fora. R. 14-16. In the last two decades, the assertion of inconsistency is also factually incorrect—which the district court, after weighing all evidence, recognized, but the Fifteenth Circuit erroneously did not.

B. THE CLOSURE OF A TRADITIONAL PUBLIC FORUM TO CERTAIN CONTENT—ESPECIALLY TO RELIGIOUS EXPRESSIVE ACTIVITY—REQUIRES STRICT SCRUTINY.

In a traditional or a designated public forum, the government's content-based restrictions on private speech must survive strict scrutiny to pass constitutional muster. *Krishna,* 505 U.S. at 678. Strict scrutiny means that speakers can be excluded from a public forum *only* when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest. *Id.* Courts have also held that strict scrutiny is the appropriate analysis for a

claim under the "hybrid rights" doctrine, where both free exercise and free speech are implicated. *Olsen v. Mukasey*, 541 F.3d 827, 832 (8th Cir. 2008).

Traditional public fora gain even more importance when they are host to core First Amendment speech. *Hague*, 307 U.S. at 515–16. Access to the parks and other similar public places to exercise First Amendment rights cannot constitutionally be denied broadly, as "free expression must not, in the guise of regulation, be abridged or denied." *Grayned v. City of Rockford*, 408 U.S. 104, 116–17 (1972). The government has a broader license to curtail speech if the forum has not been opened to that type of expression, instead needing only to be viewpoint neutral and "reasonable in light of the purpose served by the forum." *Christ's Bride Ministries, Inc. v. Se. Pennsylvania Transp. Auth.,* 148 F.3d 242, 247 (3d Cir. 1998). That was what the Fifteenth Circuit determined—but its ruling should be reversed, as it is undeniable that the Red Rock forum has been "opened" to that "type of expression" for centuries.

To avoid strict scrutiny, Delmont must prove that exclusion of the Montdel people from access to their Creator is content-neutral, that it was necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest. A law is content neutral when it may be "justified without reference to the content of the regulated speech." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976). Here, the district court deemed the regulation content-neutral, because although the burden of the sale falls most heavily on the Montdel, the land sale has a valid purpose of promoting economic activity in the state and combating climate change, and the "incidental effect" completely ending expressive activity involving the Montdel Observance, was "in no way based on the content of that activity." R. at 21. The Fifteenth Circuit, citing *Adderley v. State of Fla.,* 385 U.S. 39, 47 (1966), held that where

there was "not a shred of evidence" that the content influenced the decision to effectively demolish Red Rock, the law was valid.

But *Adderley* addressed a *nonpublic* forum, and here, there is more than a "shred of evidence" that the content of the Montdel's speech, at least in part, motivated destruction in favor of economic prosperity. The Governor dismissed the fact that the mining would destroy Red Rock, described the festivals celebrating the Montdel Observance as a "nuisance," indicated the Montdel traditions were "not significant concerns," and gave the priority to "extract the most minerals while keeping the majority of the park intact." R. at 47, 49. Secretary Greenfield was clear that the state merely "tolerated" the Montdel's rituals, and gave no credence to their significance. *Id.* at 53.While the state entered into and later withdrew transfer agreements due to environmental objections from secular organizations (R. at 28), Montdel's concerns about the transformation of Red Rock "into a water-filled quarry, making it too hazardous for public access" were dismissed. R. at 48.

When conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. *Am. Commc'ns Ass'n, C.I.O., v. Douds*, 339 U.S. 382, 399 (1950). This is because regulation of 'conduct' has all too frequently been employed by public authority as a cloak to hide censorship of unpopular ideas. *Id.* The Fifteenth Circuit avoided the content neutrality analysis altogether, focusing instead on Delmont's right to sell or transform its own property. But Justice Kennedy's dicta in *Seattle Mideast Awareness Campaign v. King County* focused on rights in a designated public forum—not a traditional public forum. 781 F.3d 489, 493 (9th Cir. 2015). Justice Kennedy acknowledged that the government "may not close a traditional public forum to expressive activity altogether." *Id.*

While the Fifteenth Circuit conducted no analysis, the district court rejected Delmont's argument and analogized the closure of a traditional public forum to a time, place, and manner restriction. R. at 13. Here, even if the government's actions are content neutral, the record does not reflect that they are narrowly tailored to serve a significant government interest, and leave ample alternative communication channels open. *Carey v. Brown,* 447 U.S. 455, 461 (1980). The requirement of narrow tailoring is satisfied 'so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation" and "the means chosen are not substantially broader than necessary to achieve the government's interest." *Ward v. Rock Against Racism*, 491 U. S., 781, 791 (1989).While environmental objectives are noble, the means chosen by the state—the destruction of Red Rock without consideration of the impact on the Montdel's fundamental free speech and free exercise rights—are not "narrowly tailored" to serve that objective. Red Rock may be mineral-rich, but there are multiple areas throughout the park which could provide the resources the government seeks, without destroying the Montdel's ability to communicate with their Creator. By dismissing the significance of Red Rock and failing to explore the disparate treatment of the Montdel people, the regulation is broader than necessary to achieve the government's interest.

Finally, it is undisputed that the government's proposed actions fail to "leave open ample alternative channels for communication of the information." *Ward***,** 491 U.S. at 91. An alternative is not ample if the speaker is not permitted to reach the intended audience. *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1229 (9th Cir.1990). There is literally no alternative here for the Montdel people to reach their Creator, as their sincere beliefs are that only Elders may request divine aid, and only at Red Rock. R. at 51. The religion prohibits individual supplicatory prayer,

and failure to engage in the Montdel Observance is a "transgression against the Creator." *Id.* If Red Rock is destroyed, the souls of the Montdel are too.

Where government regulations impacting Indigenous Tribes were upheld, there has virtually always been curative measures or studies conducted.[1] In *Douds,* ameliorative measures were planned to minimize impact to sacred sites, and no sites where specific rituals take place were to be disturbed. *Douds*, 339 U.S. at 402. This case is distinguishable in that Delmont failed to narrowly tailor its plans to minimize or prevent destruction to Red Rock, and left the Montdel with no alternative at all for their expressive activities.

For all of those reasons, Petitioners had a likelihood of success on the merits of their free speech claim, injunctive relief was proper, and the Fifteenth Circuit should be reversed.

IV. RESPONDENTS CONCEDE THAT THE BALANCE OF THE INJUNCTIVE RELIEF FACTORS FAVOR PETITIONERS.

To obtain a preliminary injunction, Petitioners must show a that they are likely to prevail on the merits, that they are likely to suffer irreparable harm, that the balance of equities tips in his favor, and that an injunction is in the public interest ." *Ashcroft v. ACLU,* 542 U.S. 656, 666 (2004). The Respondents here only challenged the first element, likelihood of success on the merits, with the Fifteenth Circuit. In doing so, they have effectively conceded that the district court's analysis on the balance of the factors was correct.

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury *Elrod v. Burns,* 427 U.S. 347, 373, (1976). The district court

[1] *See, e.g., Sequoyah v. Tennessee Valley Auth.,* 620 F.2d 1159 (6th Cir. 1980) [injunctive relief denied only because there was no evidence that the particular valley was central to or an indispensable part of Cherokee religious observances]; *Wilson v. Block,* 708 F.2d 735 [planned development would not deny Indians' access to the Peaks they held sacred, and due consideration was given to their views and needs]; *Te-Moak Tribe of W. Shoshone Indians of Nevada v. U.S. Dep't of the Interior,* 565 F. App'x 665, 667 (9th Cir. 2014)[two years of surveys did not indicate that the sacred area that will be disturbed by the project or used for religious ceremonies.]

recognized that the destruction of Red Rock, and preclusion of the Montdel from accessing it, deprives them of their religious exercise and expression for all time. Delmont did not challenge the district court's conclusion that this factor weighs heavily in favor of Petitioners, and the Fifteenth Circuit did not reverse it.

Likewise, the Fifteenth Circuit did not disturb the district court's holding that the balance of equities tips sharply in Petitioner's favor. While the denial of injunctive relief and the destruction of Red Rock, would obliterate the Montdel's sole access to their Creator, Delmont's aim of environmental or economic benefit can be met elsewhere. While alternatives for Delmont exist, there exists no viable alternative to Red Rock for the Montdel people.

The district court correctly concluded that the facts of this case favor granting injunctive relief, as the potential—but uncertain—economic growth that could result from mining does not outweigh the public's interest in preserving the park and its cultural and religious significance. This aligns with public policy as consistently recognized by our government's legislative and executive branches. Congress has enacted legislation over the decades focused on safeguarding the religious rights and sacred sites of Indigenous peoples. In 1978, Congress passed the American Indian Religious Freedom Act (AIRFA), stating in a Joint Resolution that "it shall be the policy of the United" States to protect and preserve for American Indians their inherent right of freedom to believe, "Express and exercise the traditional religions, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites." 42 U.S.C.A. § 1996. In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) to ensure that interests in religious freedom are protected. 2 U.S.C. § 20000bb. In 2000, Congress unanimously passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect individuals, houses of worship, and religious institutions from

discrimination in zoning and landmarking laws. 42 U.S.C. § 2000cc. The bill was signed into law by President Clinton, who also issued Executive Order No. 13007 to protect and preserve Indian religious practices by accommodating access to and use of Indian sacred sites and avoiding any adverse effects on the physical integrity of such sacred sites. 61 FR 26771.

While not binding in this case, these examples exemplify the intentional public policy of the executive and legislative branches to protect and preserve Native American freedom of speech, free exercise, and sacred sites. We urge the judicial branch to consider them accordingly.

CONCLUSION

Injunctive relief is necessary because Delmont's actions substantially burden Montdel's rights to free speech and religious expression in a traditional public forum, without viable alternatives for them to connect with their Creator. The plan's potential environmental or economic benefits do not justify infringing on the Montdel's First Amendment rights while leaving secular activities with alternatives. The Fifteenth Circuit's reliance on *Lyng* is legally flawed, perpetuates historical injustices that should not be tolerated. Delmont's selective enforcement of the ECIA violates principles of neutrality and general applicability established in key Supreme Court precedents. Economic interests cannot justify the irreversible destruction of Red Rock, the spiritual center of Montdel religious life. Therefore, the Fifteenth Circuit's decision should be reversed, reinstating the district court's ruling.

Dated January 19, 2025.

Respectfully submitted,

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Counsel for Petitioner, Montdel United

CERTIFICATE OF COMPLIANCE

In compliance with the Official Competition Rules for the 2004-2025 Siegenthaler-Sutherland Moot Court Competition, Counsel for Petitioner certifies that:

1. The work product contained in all copies of our brief is the work product of our team,
2. Our team has fully complied with our school's governing honor code, and
3. Our team has fully complied with all Competition Rules.

Team 13
Counsel for Petitioner