

No. 24-CV-1982

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In the  
**Supreme Court of the United States**  
March Term 2025

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**MONTDEL UNITED,**

*Petitioner,*

v.

**STATE OF DELMONT and  
DELMONT NATURAL RESOURCE AGENCY**

*Respondent.*

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

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**BRIEF FOR THE RESPONDENT**

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*TEAM 14  
Counsel for Respond  
January 31, 2025*

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## QUESTIONS PRESENTED

- I. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that the Energy and Conservation Independence Act (the “ECIA”) and subsequent transfer of Red Rock did not violate the First Amendment Free Exercise rights of Montel United, and if so, that Lyng v. Nw. Indian Cemetery Protective Ass’n should be upheld?
- II. Whether the United States Court of Appeals for the Fifteenth Circuit correctly concluded that ECIA and subsequent transfer of Red Rock did not violate the First Amendment Free Speech rights of Montel United?

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The opinion of the United States District Court for the District of Delmont, Western Division, is unpublished and may be found at *Montdel United v. State of Delmont and Delmont Natural Resource Agency*, C.A. No. 24-CV-1982 (D. Delmont Sept. 1, 2024). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *Montdel United v. State of Delmont and Delmont Natural Resource Agency*, C.A. No. 24-CV-1982 (15th Cir. Dec. 1, 2024).

## **STATEMENT OF JURISDICTION**

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on this matter on December 1, 2024. R. at 38. *Montdel United* then filed a writ of certiorari, which this Court granted. R. at 55. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1254(1).

## **STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

After the DNRA announced its final decision, *Montdel United* (the “Petitioner”) brought suit in the United States District Court for the District of Delmont, Western Division, alleging that the State of Delmont and Delmont Natural Resource Agency (the “Respondents”), through transferring government owned land upon which Red Rock is located to a private mining company for lithium extraction violated their First Amendment rights. R. at 10. The Petitioner’s request for a restraining order was denied, and a hearing was scheduled to determine whether a preliminary injunction should be granted. R. at 10. The District Court for the District of Delmont, Western Division granted judgment in favor of the Plaintiffs. R. at 32. On appeal to the Court of Appeals for the Fifteenth Circuit reversed and remanded the decision of the District

Court. R. at 45. This Court granted a writ of certiorari to resolve these Constitutional questions. R. at 55.

## **B. STATEMENT OF THE FACTS**

The Respondent's state is one of the largest states in the Union and is renowned for its mineral-rich geology. R. at 6. As the state boasts substantial reserves of copper, iron, nickel, and other minerals, distributed across various regions in the state mining constitutes a significant portion of the state's economy. R. at 6. To invigorate the state's economy and reduce dependence on natural resources, the government of Delmont initiated an agenda aimed at promoting the mining of lithium, nickel, iron, and copper. R. at 6. In order to facilitate these objectives, the Respondent enacted the ECIA. R. at 6. The ECIA authorizes the state to enter into land transfer agreements with private mining companies for the extraction of minerals. R. at 6. Land transfer agreements under the ECIA are managed by the Respondent agency. R. at 6.

A geological study conducted twenty years ago revealed that the deposits in Painted Bluffs State Park, particularly around an area known as Red Rock, boast the largest lithium deposit ever discovered in North America. R. at 7. Red Rock is a prominent landmark located within Painted Bluffs State Park that holds spiritual significance to indigenous people of Montdel descent. R. at 5. The Montdel people are an indigenous Native American group who have historically practiced at Red Rock. R. at 2. They maintain that access to their Creator in this way is solely achieved through these ceremonial practices at Red Rock, and any deviation from this practice will incur the Creator's wrath. R. at 2. These rituals were conducted in what is now known as Painted Bluffs State Park, around a roughly 100-square-mile expanse of forested highlands. R. at 2. Since the park's establishment, the Montdel people have continued to perform

their religious ceremonies at Red Rock in a pro forma manner, independent of the State Park Service. R. at 4.

In the mid and late nineteenth century, the Montdel people experienced a precarious and unstable peace with other Indigenous tribes and settlers. During this period, their population suffered severe declines due to warfare, smallpox, influenza, and crop blight. R.at 3. By the latter part of the century, the Montdel population had dwindled to just a few thousand individuals. R. at 3. These remaining members intermarried and dispersed, and by the turn of the century, the Montdel no longer existed as a distinct and separate indigenous culture. R. at 3. In 1950, an initiative was undertaken by Delmont residents James and Martha Highcliffe, a couple of Montdel heritage whose families had assimilated into other tribes but had retained their Montdel identities. R. at 5.

The Highcliffes sought to regularize and formalize the Red Rock religious practices as the "Montdel Observance." R. at 5. Their efforts encompassed the recruitment of members from various Native American tribes into which the Montdel people had been assimilated, as well as individuals outside the Native American community interested in Montdel history. R. at 5. Since 1952, participants in the Montdel Observance ritual have come to be known as the "Old Observers," who gather from the surrounding region four times a year at designated times along the Delmont River. R. at 5. In response to the increasing popularity of these gatherings, Respondent has issued vendors' licenses for food, music, and merchandise through the Park Service. R. at 6. In 2016, in response to the mining companies' persistent efforts to secure rights to Painted Bluffs, Priscilla Highcliffe, the daughter of the late James and Martha Highcliffe, established a non-profit organization named "Montdel United." R. at 7.



Following that finding and the passing of the Federal Natural Resources Defense Act (the “FNRDA”), mandating the use of sustainable energy resources in defense contracting as part of a global effort to mitigate fossil fuel extraction, mining companies started seeking rights to the various mineral deposits in Delmont. R. at 7. For a land transfer to become effective they must be appraised independently to ensure equivalent value. R. at 6. Furthermore, the transfers would be subject to environmental and economic impact studies. R. at 6.

Following the mining, Red Rock would be transformed into a water-filled quarry, with the locale becoming subject to rock shearing and erosion, rendering the region too hazardous for visitation. R at 8. Other than the destruction of Red Rock the broader environmental impact of the mining is expected to be relatively minimal. R. at 8. The practical implications of the mining operation would require those who currently participate in the equinox festivals along the Delmont River to relocate their celebrations an additional five miles down the riverbanks, though they would otherwise be able to continue their traditions. R. at 8.

The environmental impact study also explored alternative mining technologies that might mitigate the damage to Red Rock. R. at 8. Although, the report concluded that these anticipated technologies could reduce the impact, they would still cause significant alteration to Red Rock. R. at 8. These alternative technologies are still in development and are not expected to become feasible for at least another twenty years. R. at 8-9. Furthermore, should these technologies eventually become available, they may entail prohibitive costs and extended timeframes for implementation. R. at 9. Following approval of the land transfer Delmont Mining Company (“DMC”) plans to commence the blasting and clearing process immediately, having adopted an expedited schedule due to the substantial mineral deposits. R. at 9. The area will be accessible

only to DMC and its employees, as it will be privately owned by DMC. R. at 9. The DNRA announced the finalization of the initiative on April 1, 2023. R. at 9.

Over the past five years, including the three years since the enactment of the ECIA, the DNRA has entered into, but subsequently withdrawn, land transfer agreements with two mining companies. R. at 9. The first agreement involved a proposed transfer of land to Granite International, Inc., which encompassed a region of the Delmont Mountains known for its rich nickel deposits. This transfer was opposed by The Nature Conservancy and was ultimately canceled after the environmental impact study revealed that the extraction process would destroy the habitat of two endangered species. R. at 9-10. The second withdrawn agreement was with McBride Brine Mining, Inc., a company specializing in lithium brine extraction. This agreement faced objections from the Citizens of Grove Flats, Delmont. R. at 10. It was eventually canceled when the environmental impact study indicated a roughly thirty-five percent risk of water contamination affecting an aquifer that supplies reserve water to the unincorporated town of Grove Flats, which had a population of 50 according to the most recent census. R. at 10.

In January 2023, the Respondents executed an agreement to transfer one-fourth of Painted Bluffs State Park, including the Red Rock area, to Delmont Mining Company, a private corporation based in Delmont. R. at 7. The decision was met with approval from the residents of the two economically challenged counties in which Painted Bluffs State Park is located. R. at 7. These counties have depended primarily on tourism, which has proven insufficient for their economic needs. R. at 7. The Respondents approved the land transfer for several key reasons. R. at 9. First, the Respondent's commitment to reducing fossil fuel use, aligned with a federally mandated national objective, would be significantly advanced through the transition to lithium-ion batteries. R. at 9. Second, the Respondent determined that waiting for alternative mining

technologies, which may not be viable for twenty years or more, was not practical. R. at 9. Third, the economic impact study revealed that the mining operations would provide a substantial economic boost to the local economy. R. at 9. Fourth, the Respondent concluded, based on conversation with the Governor, that while the Respondent had acquiesced to the rituals of the Montdel people for a long time, the land is owned by the Respondent and therefore is free to determine its best use. R. at 9.

## **SUMMARY OF THE ARGUMENT**

### **A. QUESTION PRESENTED 1**

This court should affirm the decision of the Fifteenth Circuit's holding that Respondent's did not violate the Petitioner's free exercise rights by transferring land considered sacred by the Petitioners to private mining companies. This Court should follow *stare decisis* and uphold the Lyng decision. The Lyng case makes clear that the Constitution does not require the legislature to bend at the command of a religious group simply for the sake of religion. Furthermore, when applying the First Amendment to the facts of this case the actions of the Respondents are both neutral and generally applicable. The laws governing the transfer of one quarter of Painted Bluffs State Park does not target any specific group nor was it enacted for the purpose to prevent the practice of a religion, the law applies equally to everyone in the state and was created to promote economic wealth for the state. The land transfer would also satisfy strict scrutiny as the government has narrowly tailored the selection of land to be mined to meet its compelling interest of combating climate change.

### **B. QUESTION PRESENTED 2**

This Court should affirm the Fifteenth Circuit's finding, that Red Rock is neither a designated nor a traditional public forum. The Respondents at no time took direct action to

designate Red Rock as a public forum and given the isolated nature and rough terrain of Red Rock, Painted Bluffs State Park is unlike a traditional park which would be considered a traditional public forum. As Red Rock would be considered a non-forum, the land transfer is both neutral and generally applicable. No facts are present to suggest that the law targets the speech of Petitioners, and in no way does the purpose of the ECIA target a particular group.

### STANDARD OF REVIEW

Both questions presented are reviewable de novo. *See Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

### ARGUMENT

#### **I. PLAINTIFFS HAVE NO FIRST AMENDMENT PROTECTION BECAUSE THE GOVERNMENT IS NOT COERCING PEOPLE OF MONTELE FAITH TO VIOLATE THEIR RELIGION.**

This Court should affirm the Fifteenth Circuit Court's decision because the ECIA does not coerce Petitioners or any other religious group from halting the practice of their religion. The Free Exercise Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of a religion, prohibiting the free exercise thereof. . ." and this applies to the states through the Fourteenth Amendment's due process clause. U.S. Const. amend. 1; U.S. Const. amend. 14.

The facts and issues of this case are remarkably similar to the *Lyng* case. In *Lyng v Northwest Indian Cemetery Protective Association*, the United States Government Forest Service (the "Forest Service") wanted to construct a road to harvest lumber on federal land. *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 442 (1988). After conducting an environmental impact statement, the Forest Service was notified that the roads would lead through Native American lands that were "significant. . . integral and indispensable part of Indian religious

conceptualization and practice." Id. The Forest Service explored multiple alternative paths; however, they were all rejected because it would require the acquisition of private land, have severe stability issues, or would have further damaged the Indian's religious grounds. Id. at 443. The Forest Service took every measure they could to minimize the road's impact by providing one-half-mile protective zones around each identified religious site. Id.

The Lynn Court stated that the First Amendment applies to all citizens and guarantees them the right to practice religion without fear of government retaliation. However, the First Amendment can "give to none of them a veto over public programs that do not prohibit the free exercise of religion." Id. at 452. In addition, with the diversity of the United States of America, religion would inevitably compete with the Government on similar demands, such as the need for land. When this occurs, "[t]he Constitution does not, and courts cannot, offer to reconcile the various competing demands on government, many of them rooted in sincere religious belief. . . where that task ". . . is for the legislatures and other institutions [to determine how to balance those demands]." Id. The Northwestern Indian Cemetery Protective Association argued that the construction of the road would "diminish the sacredness of the area in question and create distractions that will interfere with "training and ongoing religious experience of individuals using [sites within] the area for personal medicine and growth. . . ." Id. at 448. The Lyng Court permitted the Forest Service to continue building the road and continued to state that "even if we assume that. . . the G-O road will "virtually destroy the . . . Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding respondent's legal claims." Id. at 451-2. The Lyng Court went on to say that "whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, *its* land." Id. at 453.

The Court should apply Lyng to this case because Delmont's actions are nearly identical to Lyng's facts and issues. The Respondents are seeking to recover the natural deposits on its land, similar to how the Forest Service sought to harvest lumber on its land. Like the Forest Service, Respondents have conducted environmental studies to determine the best locations to comply with the Federal Government's directive for states to assist in defeating climate change. Similar to the Forest Service, the Respondents considered possible alternatives from different locations, resources, and emerging technologies but ultimately decided that Red Rock was the most effective location. Red Rock is a territory owned by the Respondents, as Respondents did not sign any treaty nor transfer any land to Petitioners. Petitioner is allowed to use the territory for recreational use, just as any citizen of the state can. This Court has stated that the right of Native Americans to use the area does not give them the power to overrule or prevent the Government of its right to use its land as it sees fit.

If the Court were to overrule this notion, it would give anyone who uses government land consistently for a religious purpose the ability to revoke the Government's rights to its land without any compensation while having the legal authority to do so. A state government has two primary responsibilities. The first is to adhere to constitutional federal instructions, and the second to tend to the welfare of its citizens. The current federal mandates require the Respondents to (1) adhere to a Federal Directive to assist in climate change and (2) support its citizens in economically challenged areas. In the area surrounding Red Rock, Delmont citizens are economically challenged. The Respondents attempted to alleviate that hardship by permitting licenses for food and merchandise vendors during the equinox festivals. However, it was not enough. When the Respondents conducted economic studies, it found that selling the area would create a significant number of jobs for the area and provide a large source of funds that would

benefit the entire State. The largest amount of lithium can be mined by selling the area, providing vital materials for the fight against climate change, and complying with the Federal Directive. If it is assumed that Lyng is overruled, the Government could not comply with a federal directive or assist its citizens when needed.

Therefore, this Court should uphold Lyng v Northwestern Indian Cemetery Protection Association because it protects the Government's ability to function.

**A. First Amendment Protections Do Not Apply Because the Government's Actions Were Neutral and Generally Applicable.**

The ECIA is both neutral and generally applicable for several reasons. The ECIA does not target any religion, nor does it prohibit any person from practicing their religion. The ECIA provides no individual exceptions or exemptions, as the removal of land inherently affects every person equally. Therefore, the Court should find that First Amendment protections do not apply to Petitioners.

*i. The Law is Neutral Because it Does Not Target or Single Out Religion Because of the Group's Religious Motivation.*

The Government fails to act neutrally when it restricts a religion's practice or becomes intolerant of a religion solely based on the religion's nature. Fulton v. City of Philadelphia, Pennsylvania, 593 U.S. 522, 533 (2021). A statute fails neutrality when it is "specifically directed at . . . [a] religious practice." Kennedy v. Bremerton School District, 597 U.S. 507, 526 (2022).

The ECIA and the Delmont Government's primary reason to sell part of Painted Bluffs State Park (the "State Park") is to mine lithium as it holds the largest lithium reserve in the United States. The Delmont State sold the land to comply with the Federal Directive urging States to assist with the fight against climate change. Lithium is critical in combating climate change because it creates the batteries used in solar cars and stores energy generated from solar

and wind power sources. By not mining lithium, the State is crippling the nation's efforts. Given the significance of lithium to the climate change effort, the large reserve, and the Federal directive, the law should be found neutral in content, as there was no consideration for or against any religion.

- ii. *The Law is Generally Applicable Because It Does Not Selectively Impose A Burden on Conduct Motivated By Religious Belief and Affects Everyone in the State Equally.*

A law is not generally applicable if the Government creates a law that targets a specific group or individual while not affecting the rest of the population. Fulton v. City of Philadelphia, Pennsylvania, 593 U.S. 522, 533 (2021).

The ECIA affects every citizen of the state equally. The ECIA also only authorizes a one quarter of the State Park to be sold. When that occurs, that part of the State Park becomes private property. By becoming private property, no citizen would have access to that land unless authorized by the mining company that purchased it. In addition, the selling of the land affects the citizens around the State Park. The surrendering area has been in an economic decline. Respondent's have authorized various licenses to allow food and merchandise vendors to sell on state property to alleviate the decline. Through an economic impact report, the Respondents found it significantly beneficial to sell the land as it would create jobs in the surrendering area and grant additional funds to the State, which can be used to fund existing or new governmental assistance programs.

Given the reasons stated, as well as the reasons stated on why the statute is neutral, the law is generally applicable because it applies equally to all citizens of Respondents, grants no exceptions to any individual, nor denies a religious entity an ability to conduct an action that a secular entity would be to conduct.



**B. In a Case of Strict Scrutiny, the Government Would Win Because the Government Has a Narrow and Compelling Interest to Protect Its People from Climate Change.**

If a statute or government action is neither neutral nor generally applicable, the government must justify its action with a compelling governmental interest that is narrowly tailored to advance that compelling governmental interest. Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531-2 (1993).

If this Court finds that the ECIA or Respondent's actions are neither neutral or generally applicable, Delmont State has several compelling governmental interests that are narrowly tailored to allow for the portion sale of Painted Bluffs State Park.

If not addressed in time, climate change is a national security issue that will cause significant damage to the State in the form of air pollution, forest fires caused by dry environments, lack of water, and any additional unforeseen effects that science has not determined. The Respondents have done everything in their power to find alternative locations to mine that would, at a minimum, comply with the Federal directive. An alternative of waiting 20 years for new technology would not be feasible, as the severity of climate change demands immediate action, as stated by the United Nations and reports issued by scientists. Waiting 20 years to test an unproven technology on the largest lithium mine may cause irreparable damage to the State and country.

The Petitioner states that there are alternatives the Respondents could have taken. However, these alternatives are not feasible for several reasons. The first alternative site was denied because not protecting endangered species violates Federal law. The second alternative site was denied because mining operations would either decrease or cease the quality of life of several Delmont citizens. The function of Government is to protect its citizens. If the

Government should choose to harm 50 people in order to protect religion, it would not only be a betrayal but also a constitutional violation as the Government establishes that Petitioner's religion is more important than the lives of its citizens. Furthermore, Petitioner may still participate and practice their religion at the State Park five miles from Red Rock. Respondent's action, like the government action in Lyng, has not destroyed the Montdel religion. Lastly, economic impact reports revealed that the portion selling of State Park would significantly benefit the surrendering area by creating jobs and the people of the state by increasing funds to the legislature, which may use those funds for any governmental operations. Therefore, in granting Petitioner's argument, this Court would deny the benefits and allow the abovementioned disasters.

## **II. THE ECIA AND SUBSEQUENT TRANSFER OF RED ROCK DOES NOT VIOLATE THE FIRST AMENDMENT FREE SPEECH RIGHTS OF PETITIONER BECAUSE RED ROCK IS A NON-PUBLIC FORUM.**

This Court should affirm the Appellate Court and hold that the ECIA and subsequent transfer of Red Rock does not constitute a violation of the First Amendment rights of Petitioner. The First Amendment of the Constitution states that Congress shall make no laws "abridging the freedom of speech." U.S. Const. Amend 1. In order to determine whether the free speech rights of a particular group have been violated, we must first identify the forum in which the alleged violation took place. Therefore, "we must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." Cornelius v. NAACP Legal Defense & Educ. Fund, 473 U.S. 788, 797 (1985).

This Court has recognized three different types of fora. First, traditional public fora are "places which by long tradition or by government fiat have been devoted to assembly and debate." Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n, 460 U.S. 37, 45 (1983). Second,

designated public fora “[consist] of public property which the state has opened for use by the public as a place for expressive activity.” Id. Third, are fora that are considered nonpublic fora, as they do not fall into the first two categories. In a nonpublic forum, “the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.” Id. at 46. This Court should agree with the Appellate Court, in finding that Red Rock is neither a designated nor a traditional public forum.

We will first discuss why Red Rock is not a designated public forum. As stated by the Supreme Court in Cornelius, “the government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse.” Cornelius, 473 U.S. at 802. In this case, there is no evidence that the State of Delmont ever intentionally opened Red Rocks as a forum for public discourse. The original stated purpose of acquiring Red Rock was to preserve the natural beauty and wildlife of the state. This objective in no way suggests an intention by the Respondents to open the doors to Red Rock for public discourse. One possible contention is that Delmont authorized permits for tourists and shops to operate around Red Rock, thereby creating a designated public forum. This assertion is incorrect. As previously stated, the Supreme Court stated that a public forum is not created simply by permitting limited discourse. Permitting people to operate shops or permitting tourists to come to an area that is specifically held open to preserve its natural beauty is nothing more than permitting limited discourse. Additionally, there is no evidence that suggests the permits were for the purposes of speech. The facts of this case suggest that the permits were for commercial and economic purposes, and nothing more. Therefore, the Court should find that Red Rock is not a designated public forum.

Next, we will discuss why Red Rock is not a traditional public forum. Although the Supreme Court has stated that places “such as streets, sidewalks, and parks” are traditionally considered public fora due to being “historically associated with the free exercise of expressive activities,” the distinction between fora is not “what the forum is *called*, but what *purpose* it serves.” United States v. Grace, 461 U.S. 171, 177 (1983); Boardley v. U.S. Dept. of the Int., 615 F.3d 508, 515 (D.C. Cir. 2010). In Boardley, the test for whether a park is considered a traditional public forum must be “applied in a realistic manner which takes into account the nature and traditional uses of the particular park involved. *Id.* For example, in Heffron, the Supreme Court differentiated the Minnesota Fair Grounds from streets, sidewalks, and parks stating that “a street is continually open, often uncongested, and constitutes... a necessary conduit in the daily affairs of a locality's citizens...” Heffron v. Int'l Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 651 (1981). As the Court held in Heffron Red Rock should be distinguished from traditional public forums not just because it is not a street, or sidewalk, but because the nature and traditional uses of Red Rock establish that it has not “immemorially been held in trust for the use of the public and, time out of mind, ha[s] been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” Perry, 460 U.S. at 37.

The entire and only purpose of obtaining the Painted Bluffs State Park was to preserve its natural beauty. The area was established as a state park that allowed activities such as hiking, camping, and fishing. At no time was any part of Red Rock or the State Park opened to the public for the purposes of speech. At no time, was any part of Red Rock or Painted Bluffs State Park immemorially held in trust for the use of the public for the purposes of assembly, communicating thoughts between citizens, or discussing public questions. The Montdel people

claim that this is false. They claim that they have in fact used Red Rock as a religious site and performed their rituals there “uninterrupted since before recorded history.” There are several issues with this assertion. First, the rituals at Red Rock were not interrupted. During both World Wars and the great depression, the rituals ceased. The rituals only reemerged after the park was acquired by the state. Second, at no time before or after the state acquired the park did Petitioner ever enter into any treaties or land preservation agreements with the state. Third, the Respondents at no time officially recognized the rights of the Delmont people nor agreed to officially acknowledge their use of Red Rock. The fact that the Montdel people have been allowed to use the land uninterrupted has been nothing but a mere acquiescence of the Respondents, which as the Appellate Court stated, is not enough to establish a Traditional Public Forum.

Additionally, Painted Bluffs State Park is a very large area of land, while Red Rock was a place so remote and had such challenging geography that not even settlers came to live in the area when the State of Delmont was created in 1855. The Court should adhere to its own precedent in Heffron, that unlike traditional public forums where they are “continually open” and “constitute a necessary conduit in the daily affairs of it’s locality’s citizens” Red Rock is a non-public forum. Heffron, 452 U.S. at 651. If Red Rock was a necessary conduit in the daily affairs of its citizens, it would not have been abandoned by the Montdel people during both world wars and the great depression. Additionally, if Red Rock was continually open, far more people would have settled in or currently live in Red Rock. However, because of Red Rock’s geography, it has been virtually secluded from the rest of the State through natural means. A place such as this could not possibly be considered a traditional public forum if the only miniscule percentage of the population that makes use of it, abandoned it for decades. Further, when Red Rocks is in use,

it is only in use four times out of the entire year. That is hardly a necessary conduit in the daily affairs of citizens. Therefore, Red Rock should not be considered a traditional public forum.

Because Red Rock is neither a designated public forum nor a traditional public forum, it should be considered a non-public forum.

**A. Because Red Rock as A Non-Public Forum, the ECIA and Subsequent Transfer Must Only Be Content-Neutral and Reasonable.**

The Supreme Court has held that restrictions on expressive activity in nonpublic fora are permissible as long as the restrictions are content neutral and do not target specific speech based upon viewpoint. U. S. Postal Serv. v. Council of Greenburgh Civic Associations, 453 U.S. 114, 132 (1981). In this case, there is no evidence that suggests that the ECIA and Subsequent transfer of Red Rock was in any way created in regard to the activities, speech, or beliefs of the Delmont people, and in no way does the purpose of the ECIA or the transfer reflect any kind of regard towards Petitioner. The Appellants might argue that the affidavit of the DNRA chair, or the opinions of the Governor are sufficient to establish a viewpoint-based restriction. However, as the Appellate Court explained, this is insufficient to demonstrate that either the ECIA or the sale of Red Rock was motivated by an animus toward the Montdel people or their practices at Red Rock.

Further, the facts of this case demonstrate that the sale of Red Rocks is reasonable for multiple reasons. First, the Respondents are required to meet a federal mandate to reduce the effects of global warming by reducing fossil fuel consumption and finding alternative sources of energy. Second, the Red Rock area is the largest known lithium deposit in North America. Failing to use the natural resources in this area would be to purposefully disregard the federal mandate and take other and more ineffective, costly actions. Third, environmental studies done

of the area have shown that other proposed methods of gathering resources out of the park would have resulted in too much harm to the environment, people, and wildlife that live in the area. Additionally, other alternatives such as waiting 20 years for new equipment and technology is far too risky and time consuming, as global warming is an immediate threat, and it cannot be known what affect the new technology would have on the environment. Fourth, the sale of Red Rock would help revitalize the surrounding community and create jobs for people and communities which were primarily relying on the insufficient commerce from the festivals had at Red Rock. Therefore, the ECIA and subsequent transfer of Red Rock are content neutral, and reasonable.

For the foregoing reasons, this Court should affirm the Appellate Court’s decision and hold that Red Rock is a non-public forum, and that the ECIA and subsequent transfer of Red Rock is content-neutral and reasonable.

**B. Alternatively, if Red Rock is Considered A Public Forum, and/or if the ECIA and Transfer Of Red Rock is Considered A Time, Place, Manner, Restriction, The Restriction is Content Neutral, and are Narrowly Tailored to Serve A Significant Government Interest and Leaves Open Ample Alternatives.**

To Determine whether a restriction meets the time, place, manner restriction, it must be “justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” Ward v. Rock Against Racism, 491 U.S., 781, 791 (1989).

Regarding whether the ECIA and sale of Red Rock is narrowly tailored to serve a significant government interest, please see section (I)(B) of this Brief.

The Regulation and sale of Red Rock leaves open ample alternatives to Petitioner in three different ways. First, no activities or speech of the Montdel people are expressly restricted. The Montdel people are free to practice their religion in any way they see fit. While they may not be able to use Red Rock as they once did, they can continue to practice their faith in any other way they see fit. Second, much of Red Rock could possibly be reclaimed in the future and therefore be used by the Montdel people. Third, just as they did in 1950 after being absent for several decades, the Montdel people can come together to find a new method of practicing their rituals and their culture. Therefore, there are ample alternatives for the Montdel people

For the foregoing reasons, if the ECIA and transfer of Red Rock are subject to intermediate scrutiny and a time, place, manner, restriction test, the Court should hold that the restriction is content-neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternatives.



## CONCLUSION

For the foregoing reason, the Energy and Conservation Independence Act as well as subsequent land transfers are conditional. Further, further the Energy and Conservation Independence act is neutral and generally applicable, and this Court should adhere to stare decisis and uphold Lyng. Therefore, Petitioner's challenge should be denied, and the judgment of the Fifteenth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

Team 14

*Counsel for Respondent*

## APPENDIX A

### *Constitutional Provisions*

#### **U.S. Const. amend. I.**

Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### **U.S. Const. amend. XVI. Sec. I**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **CERTIFICATE OF COMPLIANCE**

Following the requirements of Rule III(C)(3) of the Official Rules of the 2024-25 Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Respondent, certify that:

- i. The work product contained in all copies of our team's brief is, in fact, the work product of the team members.
- ii. Our team has complied fully with our Law school's governing honor code, and
- iii. Our team has complied with all Rules of the Seigenthaler-Sutherland Moot Court Competition.

Team 14  
Counsel for Respondent