

No. 24-CV-1982

In The

Supreme Court of the United States

Montdel United,
Petitioner,

v.

**State of Delmont and
Delmont Natural Resources Agency,**
Respondents,

**On Writ of Certiorari from The United States
Court of Appeals for The Fifteenth Circuit**

BRIEF FOR PETITIONER

School Number 017

QUESTIONS PRESENTED

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

PARTIES TO THE PROCEEDINGS

The Petitioner is Montdel United.

The Respondents are State of Delmont and Delmont Natural Resources Agency.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	1
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.....	1
INTRODUCTION.....	1
STATEMENT.....	2
A. Factual and Statutory Background.....	2
B. Procedural History.....	6
SUMMARY OF THE ARGUMENT.....	6
ARGUMENT.....	8
I. THE FIFTEENTH CIRCUIT ERRED IN THEIR FAILURE TO RECOGNIZE THE MONTDEL’S RIGHT TO FREE EXERCISE OF RELIGION WHEN THEY DENIED INJUNCTIVE RELIEF PREVENTING THE DESTRUCTION OF A SACRED, RELIGIOUS SITE.....	8
A. Under RFRA, the Fifteenth Circuit erred in their failure to recognize the Montdel’s Free Exercise of Religion when they conveyed sacred land for a commercial enterprise.	9
1. The actions of the State are a violation of law because they do not further a compelling governmental interest.....	9
2. The actions of the State are a violation of law because they are not the least restrictive measure available.....	10
B. Under AIRFA, the Fifteenth Circuit failed to faithfully protect the free exercise rights of the Montdel’s religious freedom to worship through traditional ceremonies and rites requiring the Government to eliminate the interference created when sacred land was conveyed for a commercial purpose.	12
1. Under AIRFA the rights of Native Americans to practice their traditional religions, including access to sacred sites, are protected.....	13
2. Under AIRFA, the rights of Native Americans to practice their traditional religions include the use and possession of sacred objects.....	14
II. THE FIFTEENTH CIRCUIT FAILED IN DETERMINING THAT RED ROCK WAS NOT A PUBLIC FORUM BECAUSE IT HAS TRADITIONALLY BEEN OPEN TO THE PUBLIC AND ITS INTENDED USE IS CONSISTENT WITH PURPOSES OF ASSEMBLIES, COMMUNICATING THOUGHTS BETWEEN CITIZENS AND DISCUSSING PUBLIC QUESTIONS.....	14

III. SINCE RED ROCK IS A PUBLIC FORUM, THE GOVERNMENT CAN IMPOSE REASONABLE RESTRICTIONS ON THE TIME, PLACE, AND MANNER OF PROTECTED SPEECH; HOWEVER, ECIA IS NOT NARROWLY TAILORED TO A COMPELLING GOVERNMENTAL INTEREST AND DOES NOT PROVIDE OPEN AMPLE ALTERNATIVE CHANNELS OF COMMUNICATION..... 18

 A. The extraction of lithium from Red Rock is not a compelling governmental interest because Delmont is rich in minerals in other areas of the state, which will satisfy its agenda to mitigate fossil fuel extraction, boost the economy, and be a frontrunner for national defense contracting. 19

 B. The extraction of lithium from Red Rock is not narrowly tailored because the regulation does not promote a substantial governmental interest that would be achieved less effectively absent the regulation. 20

 C. The destruction of Red Rock, the Montdel’s sacred, religious site, does not leave open ample channels of communication because Red Rock is the only place where the Montdels can express their protected speech..... 21

IV. THE FIFTEENTH CIRCUIT ERRED IN ITS FAILURE TO RECOGNIZE ITS TRUST OBLIGATIONS TO PROTECT THE MONTDEL’S RIGHTS OF FREE EXERCISE OF RELIGION AND SPEECH..... 23

 A. Under the United Nations Declaration on the Rights of Indigenous Persons (UNDRIP), the United States joined the international community in their establishment of a social policy focusing on protecting the inherent rights of Indigenous Persons..... 23

 B. Under the American Declaration of the Rights of Indigenous Peoples (ADRIP), the United States has established a policy focusing on protecting the inherent rights of Native Americans..... 24

CONCLUSION..... 25

APPENDIX A

APPENDIX B

TABLE OF AUTHORITIES

Cases

<i>Abdulhaseeb v. Calbone</i> , 600 F.3d 1301 (10th Cir. 2010)	12, 13
<i>Am. Civ. Liberties Union of Nev. v. City of Las Vegas</i> , 333 F.3d 1092 (9th Cir. 2003).....	15
<i>Apache Stronghold v. United States</i> , 95 F.4th 608 (9th Cir. 2024)	9
<i>Boardley v. United States Dep't of Interior</i> , 615 F.3d 508 (D.C. Cir. 2010).....	15, 16, 17
<i>City Council v. Taxpayers for Vincent</i> , 466 U.S. 789 (1984)	21
<i>Clark v. Cmty. for Creative Non-Violence</i> , 468 U.S. 288 (1984).....	18
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	19
<i>Emp. Div. v. Smith</i> , 494 U.S. 872 (1990)	10
<i>Evans v. Sandy City</i> , 944 F.3d 847 (10th Cir. 2019)	18
<i>Freedom from Religion Found. v. City of Marshfield</i> , 203 F.3d 487 (7th Cir. 2000)	15, 16
<i>Frisby v. Schultz</i> , 487 U.S. 474 (1988)	18, 20, 21
<i>Hague v. CIO</i> , 307 U.S. 496 (1939).....	15
<i>Hamilton v. Regents of the Univ. of Cal.</i> , 293 U.S. 245 (1934)	8
<i>Int'l Soc'y for Krishna Consciousness, Inc. v. Lee</i> , 505 U.S. 672 (1992).....	15
<i>Kusper v. Pontikes</i> , 414 U.S. 51 (1973).....	19
<i>LaCroix v. Town of Fort Myers Beach, Florida</i> , 38 F.4th 941 (11th Cir. 2022)	18, 21, 22, 23
<i>Midrash Sephardi, Inc. v. Town of Surfside</i> , 366 F.3d 1214 (11th Cir. 2004).....	17
<i>Morgan v. Henderson</i> , No. 1:07-CV-0874-TWT, 2007 U.S. Dist. LEXIS 31473 (N.D. Ga. April 30, 2007)	7, 12
<i>N.M. Navajo Ranchers Assoc. v. ICC</i> , 702 F.2d 227 (D.C. Cir. 1983)	13
<i>Nesbeth v. United States</i> , 870 A.2d 1193 (D.C. 2006).....	9

<i>Nw. Indian Cemetery Protective Ass'n v. Peterson</i> , 795 F.2d 688 (9th Cir. 1985)	11
<i>Perry Educ. Ass'n v. Perry Local Educators' Ass'n</i> , 460 U.S. 37 (1983).....	7, 15
<i>Pylar v. Doe</i> , 457 U.S. 202 (1982).....	8
<i>Thomas v. Review Bd. of Ind. Emp't Sec. Div.</i> , 450 U.S. 707 (1981).....	12
<i>United States v. Grace</i> , 461 U.S. 171 (1983).....	15
<i>United States v. Israel</i> , 317 F.3d 768 (7th Cir. 2003).....	10
<i>United States v. Whitsitt</i> , No. 5:22-MJ-00028-DW, 2022 WL 1091346 (D.S.D. April 12, 2022).....	18, 21, 22, 23
<i>United States v. Wilgus</i> , 606 F. Supp. 2d 1308 (D. Utah 2009)	14
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781 (1989).....	18, 20, 21
<i>Wilson v. Block</i> , 708 F.2d 735 (D.C. Cir. 1985)	13
Statutes	
28 U.S.C. § 1291	1
28 U.S.C. § 1331	1
42 U.S.C. § 1996.....	7, 12, 14
42 U.S.C. § 2000bb-1	7, 9, 10
Alaska Stat. § 27.19100	12
Cal. Pub. Res. Code § 25232	11
LVMC 11.68.100.	15
MCLS § 324.63205.....	11
N.M. Stat. Ann. § 69-36-3.....	12
S.D. Codified Laws § 45-6B-74	11
Utah Code Ann. § 40-8-24.....	11

Utah Code Ann. § 65A-6-4.....11

Other Authorities

ADRIP. AG/RES. 2888 (June 15, 2016)..... 24

BOEM News, Vol. 32, 883-948 (1996) 14

GA Res. 61/295..... 23, 24

Regulations

36 C.F.R. § 2.51 22

Exec. Order No. 13007, 3 C.F.R. 196 (1996) 13

Constitutional Provisions

U.S. Const. amend. I..... 7, 8

U.S. Const. art. III, § 2..... 1

OPINIONS BELOW

The Fifteenth Circuit reversed a preliminary injunction issued by the United States District Court for the District of Delmont to temporarily halt the transfer of mining rights for Painted Bluff State Park (Park) to the Delmont Mining Company (DMC) on February 3, 2024. The decision is unpublished. Case No. 24-CV-1982.

JURISDICTION

The District Courts had jurisdiction over this matter pursuant to 28 U.S.C. § 1331. The Circuit Court of Appeals had jurisdiction over the district court's decision pursuant to 28 U.S.C. § 1291. This Court has jurisdiction over decisions of the Circuit Courts pursuant to Art. III, Sec. 2 of the United States Constitution.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

(See Appendix B)

INTRODUCTION

The Fifteenth Circuit erred as a matter of law when it upheld the Delmont Energy and Conservation Independence Act (ECIA), transferring Red Rock to DMC in violation of the First Amendment, Religious Freedom Restoration Act (RFRA), American Indian Religious Freedom Act (AIRFA), G.A. Res 61/295, and AG/RES. 2888 (XLVI-O/16). Montdel United seeks to prevent government mining operations on Red Rock, a site of religious significance. Upon this altar, they have practiced the tenets of their faith for centuries. The proposed land sale and subsequent mining activities will eliminate all access to this sacred site ending in its complete destruction. (R. at 8). With brief periods of war and famine, Red Rock has been used since 400 B.C. and with the full knowledge and support of the State of Delmont (State). (R. at 4). Moreover, the State has benefited financially and encouraged tourism by the general public who are attracted

to the Montdel's unique prayer vigils and visible supplications. (R. at 6) This recent State sale effectively eliminates the Montdel's ability to practice their religion and imposes a substantial burden on religious freedom.

This memorandum defends the Montdels and their right to the free exercise of religion in their beliefs and free speech. The Free Exercise Clause was further expanded in the landmark case, *Cantwell v. Connecticut*, holding that First Amendment protections of religious freedom apply to state and federal governments. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Moreover, Red Rock is a public forum traditionally open to the public and having an intended use consistent with public expression. This analysis confronts constitutional implications of state action, the applicability of statutes, and the government's trust obligations to protect Native American culture and religion. The nation has an obligation to support policy declarations that are the historical consequence of marginalizing Native Americans.

STATEMENT

A. Factual and Statutory Background

The Montdels are Native Americans, established by cultural archeologists, whose presence has been in the area since 400 A.D. (R. at 2). French explorers in 1500s noted their intricate social structures and elaborate religious practices at Red Rock, a sacred site central to their religious practices and cultural identity. (R. at 2-3). These religious practices, to include crop sacrifices and other supplications, are carried out by the village elders on behalf of the entire community during the fall and spring equinox and the summer and winter solstices. (R. at 3). Oral histories of the tribe, dating back before recorded history, reveal that these rituals have been uninterrupted for centuries. *Id.* Tribal practices include a belief that the Creator can only be reached in group

supplicatory prayer¹ during specific times, through the collective, unified voices of their elders. *Id.* Montdel religious doctrine specifically prohibits individual supplicatory prayer, maintaining that access to the Creator is achieved solely through ceremonial practices conducted at Red Rock with deviations incurring the Creator's wrath. (R. at 3).

Delmont was granted statehood in 1855. *Id.* This grant did not address the presence or rights of indigenous people. (R. at 3-4). The State never entered into any land treaties or preservation agreements with the Montdels. *Id.* Regardless of the absence of any formal agreements, the Montdel continued to travel to Red Rock quarterly. *Id.* Their participation varied annually amidst World Wars, the Great Depression, economic hardships, wartime commitments, and other challenges. (R. at 4).

In 1930, Delmont acquired the Park, including Red Rock, by eminent domain, with the intention of preserving its natural beauty while offering the public opportunities for camping, hiking, and fishing along the banks of the Delmont River. *Id.* Throughout this redesignation, the Montdels continued to practice religious ceremonies at Red Rock, *pro forma*, without interference by Park Service. *Id.* The State has never impeded or restricted them from observing or practicing in the area, but rather utilized references to their religious practices to promote the Park and encourage tourism. *Id.* Governor Ridgeway addressed the lasting heritage of the Montdel people by public proclamation, during the Park's opening ceremony when he stated, they have been "... part of the land for centuries before there was ever thought of such a thing as Delmont or even America. Their supplications to the Almighty in the Painted Bluffs are part of the legacy that the state profoundly cherishes." (R. at 4-5).

¹ A humble adoration requesting God for considerations, either for themselves or another.

In 1950, Delmont residents and the Montdels, undertook a deliberate initiative to regularize and formalize their Red Rock religious practices known as the “Montdel Observance.” (R. at 5). The Highcliffe family, instrumental in this initiative, sought to incorporate the Montdels who had assimilated into other tribes. *Id.* The couple reinitiated formal pilgrimages to Red Rock during traditional times. *Id.* Since 1952, “Montdel Observance” has continued without interruption. *Id.* The formal, religious observation begins with the ten eldest members, known as the “Old Observers,” as they ascend Red Rock with prayers gathered from their community to perform crop sacrifices and supplications to the Creator. *Id.* This seasonal event occurs over a period of twenty-four hours, while the remaining members engage in praise rituals and meditations at the base. *Id.* The two Equinox rituals have developed into a festival-like event of considerable size and scope, including students on spring break and other attendees, bringing revenue and tourism to the State. *Id.* Additionally to promote these festivals, the State has issued vendor licenses. *Id.* At the festivals, a range of activities including dances, stargazing, singing, crafts, art displays, and speeches are scheduled. (R. at 6). The “Old Observers” have always paid deference to the State, never raising objections to these public and commercial ventures running concurrently with their religious ceremony. *Id.*

Delmont, one of the largest states in the union, is renowned for its mineral-rich geology that contributes significantly to the State’s economy. *Id.* The Park has lithium-bearing pegmatite deposits, though substantial reserves of copper, iron, nickel, and other minerals can also be found in the mountains and the desert. *Id.* Three years ago, the government enacted the ECIA to reduce fossil fuel dependency while invigorating the State’s economy with land transfer agreements to mine lithium, nickel, iron, and copper. *Id.* These agreements were to be made with private mining companies and would be managed by the Delmont Natural Resource Agency (DNRA) under the

authority granted by ECIA. (R. at 6). By law, all land transfers are independently appraised to ensure equivalent value, subject to independent environmental and economic impact studies. *Id.* When the studies are completed, the DNRA has sixty days to proceed with the transfer. *Id.* The ECIA was endorsed by both federal executive and legislative bodies, who recently enacted the Federal Natural Resources Defense Act (FNRDA), mandating sustainable energy resources in defense contracting as part of a global effort to mitigate the extraction of fossil fuel. (R. at 6-7). Twenty years ago, a study revealed that the largest lithium deposits in the United States are located around Red Rock. (R. at 7). This significant finding drew mining companies seeking the rights to these deposits but legislation facilitating transfers, over the past decade, were unsuccessful. *Id.*

In 2016, Priscilla Highcliffe established a non-profit organization for Montdel descendants opposing transfer of the Park, safeguarding their religious site and ritual practices at Red Rock, and other sites of religious significance from development throughout the consideration process. *Id.* In January 2023, with the support of local residents, DNRA completed an agreement to transfer one-fourth of the Park, including Red Rock, to the DMC under authority of the ECIA. *Id.* The mining process entails extracting lithium from ore deposits in lieu of the more common brine, clearing the surface, scraping away the earth, blasting rock, and transporting that debris for processing into concentration. (R. at 8). The environmental impact study confirms that this operation will destroy Red Rock and the surrounding area, filling the resultant quarry with water and subjecting the area to rock shearing and erosion, rendering the area hazardous for visitation. *Id.* Once this operation has been completed, reclamation is unfeasible. *Id.* The land proposed as an exchange for the Park is of equivalent value but situated in a different part of the State. (R. at 8). DNRA explored alternative mining technologies to mitigate the damage to Red Rock. (R. at 9).

DNRA's approval of the transfer was based on the State's commitment to a federally mandated reduction in fossil fuel, the impractical wait for emerging alternative mining technologies, and anticipated substantial economic boost in the local economy. *Id.* The governor's position is that the State is free to determine the best use of its land. *Id.* DNRA's finalization of the initiative was announced April 1, 2023, with plans to blast and clear Red Rock immediately based on an expedited schedule. *Id.* Once transfer occurs, the area will be privately owned by DMC, eliminating any access to the Montdels. *Id.*

B. Procedural History.

Montdel United has sought a temporary restraining order and injunctive relief to stop the land transfer violating the community's constitutional right to free exercise rights and their free speech under the First Amendment. (R. at 9). This relief was originally granted by the Delmont District Court but later overturned by the Fifteenth Circuit upon review. (R. at 10, 32, 49). The U.S. Supreme Court granted certiorari to review the transfer considering its impact on the Montdel's First Amendment's Free Exercise and Free Speech rights. (R. at 55).

SUMMARY OF THE ARGUMENT

Montdel United asks this Court for injunctive relief to prevent the land transfer and imminent destruction of Red Rock because it is a sacred site central to the practice of their religion. Historically, the State has never impeded or restricted the Montdel's religious observances but encouraged, by promotion, their quarterly supplications as an economic enterprise attracting tourism to the area. (R. at 5). Furthermore, the Governor issued an executive proclamation recognizing the "lasting heritage of the Montdel people," by acknowledging their centuries-long connection to Red Rock. (R. at 4-5). Red Rock has been continually used as a public forum, and

its destruction is a clear violation of the Montdel's First Amendment rights of free exercise of religion and freedom of speech. U.S. Const. amend. I.

The government has placed an additional burden upon the Montdel's right to free exercise of religion under the RFRA. 42 U.S.C. § 2000bb-1. Montdel United asserts that this action significantly burdens their right to religious exercise with the elimination of the very altar upon which they worship. The government failed to employ alternative methods of extraction that would preserve the Park, and Red Rock, in particular.

Furthermore, under the AIRFA, the government has an expressed policy to protect and preserve the inherent rights of Native Americans. 42 U.S.C. § 1996. Acknowledging that AIRFA does not create enforceable individual rights, it nonetheless establishes a policy to protect and preserve the traditional religious practices of these citizens, including access to sacred sites. *Morgan v. Henderson*, No. 1:07-CV-0874-TWT, 2007 U.S. Dist. LEXIS 31473 (N.D. Ga. April 30, 2007). Here, Montdel United have standing asserting protection of their religious practice of supplication to the Creator and access to Red Rock.

Additionally, the government has placed a burden upon the Montdel's right to freedom of speech. In determining if freedom of speech has been burdened, courts first assess the forum where expressive conduct is occurring. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). The forum analysis dictates whether the place is a public, designated public or non-public forum. *Id.* Courts then apply the necessary restrictions, if any, on what the government can and cannot do in relation to violating one's First Amendment right to free speech. *Id.* The Fifteenth Circuit erred in determining what forum Red Rock is, and therefore, the restrictions applied were incorrect in the assessment.

Finally, the United States government has a trust obligation to protect Native American culture and religion, as recognized in various statutes and case law. Montdel United argue that the government's actions permitting mining operations on Red Rock violate these trust obligations, failing to protect their religious practices. The confluence of relevant facts and state action necessitates this Court's indulgence in granting Montdel United's request for injunctive relief.

ARGUMENT

I. THE FIFTEENTH CIRCUIT ERRED IN THEIR FAILURE TO RECOGNIZE THE MONTDEL'S RIGHT TO FREE EXERCISE OF RELIGION WHEN THEY DENIED INJUNCTIVE RELIEF PREVENTING THE DESTRUCTION OF A SACRED, RELIGIOUS SITE.

The First Amendment right of free exercise of religion applies to all Americans, including the Montdels. U.S. Const. amend. I. This deeply held tenant of American jurisprudence is "constitutionalized" and therefore enshrined in the fundamental law of the land, giving it the highest level of legal protection and authority. Embodied in this mandate, are inalienable protections of a citizens' right to practice their religion as they please, so long as the practice does not run afoul of "public morals" or a "compelling" governmental interest. This concept was largely established in the *Cantwell* case, which gave the Supreme Court the opportunity to apply such laws to the states. *See Cantwell*, 310 U.S. at 303 (holding that the Free Exercise Clause had been incorporated against the states through the Fourteenth Amendment); *see also Hamilton v. Regents of the Univ. of Cal.*, 293 U.S. 245, 262 (1934) (holding that the 'liberty' protected by the due process clause of the Fourteenth Amendment includes the right to hold and teach certain religious beliefs); *see also Pyle v. Doe*, 457 U.S. 202, 209 (1982) (affirming constitutional protections extend to anyone within a state's jurisdiction).

A. Under RFRA, the Fifteenth Circuit erred in their failure to recognize the Montdel's Free Exercise of Religion when they conveyed sacred land for a commercial enterprise.

The Supreme Court in *Lyng* held that the Free Exercise Clause does not prohibit the government from permitting activities on government lands that adversely affect religious practices. *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988). However, Montdel United argues that the government's actions violated RFRA when proposed mining operations promulgated by the ECIA transferred Red Rock, unilaterally terminating their ability to practice their religious beliefs which require continued access and use of sacred Red Rock.

Under RFRA, the government is prohibited from substantially burdening a person's religious exercise unless its action furthers a compelling governmental interest and is the least restrictive means available. *Nesbeth v. United States*, 870 A.2d 1193, 1196 (D.C. 2006).

1. The actions of the State are a violation of law because they do not further a compelling governmental interest.

In *Nesbeth*, the Court clarified that an overarching governmental interest is one that outweighs a defendant's religious freedom claims. 870 A.2d at 1196. Additionally, the *Lyng* Court held that the government could proceed with actions that "incidentally" affect religious practices on public land. 485 U.S. at 545. Here, the Montdels can distinguish their case because the imminent and complete physical destruction of their sacred site, goes well beyond mere interference and in so doing "flies in the face" of RFRA's free exercise protectionist requirement.

Additionally, RFRA requires that the government demonstrate that its action furthers a compelling governmental interest. 42 U.S.C. § 2000bb-1. *Apache Stronghold*, the court did not find the government's mining plans to impose a substantial burden on the Apache's religious practices under the RFRA's definition, and thus, did not apply the compelling interest test. *Apache Stronghold v. United States*, 95 F.4th 608 (9th Cir. 2024). This indicates that whether a mining

operation constitutes a compelling governmental interest under RFRA would depend on whether specific circumstances meet the substantial burden threshold. A substantial burden is an activity that intentionally interferes with religious exercise, compels a group to a particular action, and interferes with the claimant's ability to practice their faith. *Id.*

Here, the State has intentionally interfered and burdened the Montdel's ability to practice their religious beliefs at the core site of their faith and homage. No alternate location supplants the source of their devotion and prayer. The State's interference burdens faith practice in deference to statutory law, mandating the very opposite course of action.

Moreover, an individual asserting a claim or defense under RFRA must show by a preponderance of the evidence that the government action in question would substantially burden the sincere exercise of his religion, whereupon the burden of proof shifts to the government. *United States v. Israel*, 317 F.3d 768, 771 (7th Cir. 2003). This analysis was first illustrated in *Emp. Div. v. Smith*, when the court codified the compelling interest balancing test to determine if laws that burden religious practices are inconsistent with our First Amendment. *Emp. Div. v. Smith*, 494 U.S. 872 (1990). The Court held that the First Amendment applies to all federal and state laws, as well as the implementation of those laws. 494 U.S. at 872; *see also* 42 U.S.C. § 2000bb(1).

Here, Montdel United can assert that the government's actions significantly burden their right to religious exercise by destroying the temple where they worship and are not the least restrictive means available when alternative measures would protect and preserve the sacred site.

2. The actions of the State are a violation of law because they are not the least restrictive measure available.

The State has alternative measures to reduce fossil fuel and encourage economic growth while sustaining the religious freedom of its citizenry and preserving the natural beauty of its sacred land. This stance is not without merit. In *Nw. Indian Cemetery Protective Ass'n.*, Justice Beezer endorses

the actions taken by the Government to minimize the impact that construction of a road would have had on local tribes, whose worship centered on a particular religious site. *Nw. Indian Cemetery Protective Ass'n v. Peterson*, 795 F.2d 688, 795 (9th Cir. 1985) (Beezer, J., dissenting in part). A Blue-Ribbon, Government Commission produced a 423-page study assessing the effects that the road project would have on the cultural and religious value of Chimney Rock. *Id.* at 692. The report was so sympathetic to [Native Americans'] interests that the government decided that no sites where specific rituals take place should be disturbed choosing instead alternate routes, "the farthest removed from contemporary spiritual sites . . ." *Id.*

Notably, states have alternatives to destructive mining when extracting lithium and many have instituted specific regulations to both encourage and mandate these methodologies. For instance, California now utilizes geothermal power in mineral recovery providing additional market opportunities while prioritizing the safety and preservation of the environment. Cal. Pub. Res. Code § 25232.

Similarly, Utah gives priority to those applicants seeking to extract lithium from the Great Salt Lake who do not use evaporative concentrations of brine. Utah Code Ann. § 65A-6-4. Furthermore, when Utah allows for brine mining operations through production wells, it excludes operations on the Great Salt Lake, with an eye towards protecting the lake's health, while balancing the needs of the extraction industry with the lake's ecological survival. Utah Code Ann. § 40-8-24.

Additionally, South Dakota encourages development of less destructive mining methods and better land reclamation practices through studies and programs initiated by their Minerals and Environment Board. S.D. Codified Laws § 45-6B-74.

Moreover, Michigan requires a comprehensive mining, reclamation, and environmental protection plan that minimizes adverse impacts on natural resources, the environment, and public health. MCLS § 324.63205.

Likewise, Alaska's mining operations must include a reclamation plan to rehabilitate the physical environment and prevent unnecessary degradation. Alaska Stat. § 27.19100.

Further, New Mexico includes various extraction and processing methods, emphasizing reclamation to mitigate environmental disturbances. N.M. Stat. Ann. § 69-36-3.

Overall, states have different approaches and regulations to manage the impacts of lithium mining but all of them prioritize safe extraction methods, non-evaporative techniques, and assurances that proper land reclamation and environmental protections are in-place. The State has been entrusted with the preservation of Red Rock as a national land treasure and historically significant, sacred site. American values are reflected in the actions taken by so many states to responsibly regulate the manner and method of potentially destructive lithium mining. The State has a civic duty to be in lockstep with the direction of the nation in stopping the arbitrary destruction of treasured land, in particular, Red Rock.

B. Under AIRFA, the Fifteenth Circuit failed to faithfully protect the free exercise rights of the Montdel's religious freedom to worship through traditional ceremonies and rites requiring the Government to eliminate the interference created when sacred land was conveyed for a commercial purpose.

AIRFA protections are rights of Native Americans to practice their traditional religions, including access to sacred sites. 42 U.S.C. § 1996. Although AIRFA does not create an enforceable individual right, it establishes the policy to protect and preserve the right to religious expression at sacred sites, including ceremonies and traditional rites. *Morgan*, 2007 U.S. Dist. LEXIS 31473 at *2-3. Furthermore, when a sincere religious claimant draws a line ruling in or out a particular religious exercise, "it is not for us to say that the line he drew was an unreasonable one." *See*

Thomas v. Review Bd. of Ind. Emp't Sec. Div., 450 U.S. 707, 716 (1981); *see also Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1314 (10th Cir. 2010).

Here, Montdel United asserts AIRFA in advocating for the protection of their religious practices and access to religious sacred sites. Their sincerely held belief in the sanctity of Red Rock to the practice of their religion is not subject to the scrutiny of the state or this Court. *Abdulhaseeb*, 600 F.3d at 1314.

1. Under AIRFA the rights of Native Americans to practice their traditional religions, including access to sacred sites, are protected.

AIRFA requires federal agencies to evaluate their policies and procedures with the aim of protecting the religious freedom of Native Americans to refrain from prohibiting access, possession, and use of religious objects, and to consult with their organizations regarding proposed actions. *Wilson v. Block*, 708 F.2d 735, 746 (D.C. Cir. 1985). Though AIRFA does not mandate that Native traditional religious considerations always prevail over other interests, the court's holding sent a clear message that the nation will not ignore their AIRFA duties. *N.M. Navajo Ranchers Assoc. v. ICC*, 702 F.2d 227, 228 (D.C. Cir. 1983) (per curiam). The *Navajo* court remanded for further consideration, the Interstate Commerce Commissions' (ICC) approval of a rail line to be built across northwestern New Mexico because the ICC had failed to properly consider evidence the railroad would not fulfill its promise to protect Navajo sacred sites along the right-of-way. *Id.* at 230. Similarly, the State has not adequately subsumed its responsibility to uphold its duty under AIRFA when it failed to evaluate policies and procedures required by law to protect religious freedom, assure access, possession, and use of religious objects, and consult with the Montdels regarding their proposed action to decimate Red Rock.

Additionally, Executive Order 13007, signed by President Clinton in 1996, instructs federal agencies to accommodate access to and ceremonial use of Native American sacred sites by their

religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. Exec. Order No. 13007, 3 C.F.R. 196 (1996). The Director of the Bureau of Ocean Energy Management (BOEM) signed a statement of basic policy and procedures to ensure full compliance with the order. *BOEM News*, Vol. 32, 883-948 (1996). With this public support, BOEM demonstrated a commitment to respecting Native American religious practices and the protection of their sacred sites. This “loud warning shot across the bow” reminds us that cultural sensitivity has profound implications for the American people and, more specifically here, for the State.

2. Under AIRFA, the rights of Native Americans to practice their traditional religions include the use and possession of sacred objects.

AIRFA establishes the policy of the United States to protect and preserve the inherent right of American Indians to believe, express, and exercise their traditional religions. 42 U.S.C. § 1996. This includes access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites. *Id.* The government cannot justify the religious restrictions created by a policy as necessary to further the policy's aims if that policy is riddled with exceptions promoting the interests of non-religious goals. *United States v. Wilgus*, 606 F. Supp. 2d 1308, 1310 (D. Utah 2009). Here, Red Rock is a sacred object, the center point of their worship, for which there is no substitution. The desire for economic enhancement does not supplant this dominant religious interest.

Therefore, the Fifteenth Circuit erred in their failure to recognize the Montdel’s right to free exercise of religion when they denied injunctive relief preventing the destruction of a sacred, religious site.

II. THE FIFTEENTH CIRCUIT FAILED IN DETERMINING THAT RED ROCK WAS NOT A PUBLIC FORUM BECAUSE IT HAS TRADITIONALLY BEEN OPEN TO THE PUBLIC AND ITS INTENDED USE IS CONSISTENT WITH PURPOSES OF ASSEMBLIES, COMMUNICATING THOUGHTS BETWEEN CITIZENS AND DISCUSSING PUBLIC QUESTIONS.

The Supreme Court has constructed an analytical framework known as “forum analysis” for evaluating First Amendment claims relating to speech on government property. *Am. Civ. Liberties Union of Nev. v. City of Las Vegas*, 333 F.3d 1092 (9th Cir. 2003) (citing *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45-46 (1983)). A traditional public forum is a place that “by long tradition or by government fiat has been devoted to assembly and debate.” See *United States v. Grace*, 461 U.S. 171, 177 (1983). The quintessential traditional public forums are sidewalks, streets, and parks. *Id.* These areas 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.” See *Hague v. CIO*, 307 U.S. 496, 515 (1939). Moreover, whether a park has historically been used for public expression plays an important role in determining if the property will be considered a public forum. *Freedom from Religion Found. v. City of Marshfield*, 203 F.3d 487 (7th Cir. 2000) (citing *Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 681 (1992)). Many national parks which would be classified as non-public forums can undoubtedly include areas that meet the definition of public forum. *Boardley v. United States Dep’t of Interior*, 615 F.3d 508 (D.C. Cir. 2010).

For example, the scope of permissible governmental interference with expressive activity varies depending upon the nature of the location in which speech is to take place. *Am. Civ. Liberties Union of Nev. v. City of Las Vegas*, 333 F.3d 1092 (9th Cir. 2003). The City of Las Vegas contracted with a private entity to transform frumpy Fremont Street into the glamorous Fremont Street Experience. *Id.* at 1095. The Las Vegas Municipal Code (LVMC) prohibited many forms of expressive activity within the Fremont Street Experience. LVMC 11.68.100. The court held that the Fremont Street Experience was a traditional public forum because of its use, by its history and tradition, and purpose, and its openness to the public. *Id.* at 1102-03.

Additionally, despite the sale of park land to a private body, the court can find that the property constitutes a part of a public forum. *Freedom from Religion Found. V. City of Marshfield*, 203 F.3d 487 (7th Cir. 2000). In 1959, the City of Marshfield accepted a gift of a statute of Jesus Christ. *Id.* at 489. The City placed the statute in what was then known as Wildwood Park—undeveloped property owned by the City. *Id.* The City specifically reserved the area for park purposes and agreed to build the infrastructure necessary to support a public park. *Id.* The court held that the property was a city park and a traditional public forum. *Id.* at 494. The court based their findings on four factors: (1) the historical association of the property with a public forum; (2) the dedication of the property to public use; (3) the physical location of the site in relation to the public park; and (4) the location and orientation of the statute of Christ within it. *Id.*

Lastly, when determining whether a forum is a public forum for purposes of a First Amendment claim, it is not what the forum is called, but what purposes it serves, either by tradition or specific designation. *Boardley v. United States Dep't of Interior*, 615 F.3d 508 (D.C. Cir. 2010). In *Boardley*, a group of associates attempted to distribute free tracts discussing the Gospel of Jesus Christ within a “free speech area” of Mount Rushmore National Park. *Id.* at 512. A park ranger stopped them because they lacked a permit. *Id.* The court stated that the protections do not rise or fall depending on the characterization ascribed to a forum by the government. *Id.* at 514. The court reasoned that what makes a park a traditional public forum is not its grass and trees, but the fact that it has “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.” *Id.* at 515.

Here, the Montdel’s have used Red Rock as a sacred site of assembly for over 1500 years. Additionally, Red Rock’s purpose has been central to the Montdel’s religious practices, where they

believe that they can pray to their Creator during these specific times at this specific place. Any deviation from this exact ritual, including prayer in a different place, will incur the wrath of their Creator. Notably, their religious doctrine explicitly prohibits individual supplicatory prayer, as individual Montdels are forbidden to ask for aid or forgiveness. Therefore, the use and purpose, both historically and traditionally, of Red Rock designates it as a public forum because it is where the Montdel's assemble for worship.

Moreover, the State acquired the Park, including Red Rock, with the intention of preserving its natural beauty, and providing outdoor activities to the public. Additionally, the State has utilized references to the Montdel religious practices in promoting the Park since procurement. Due to the promotion by the State, festivals have been established celebrating two seasonal rituals. By encouraging these events, the State has made Red Rock a traditional public forum. (R. at 6).

Further, an "assembly" is "a company of persons collected together in one place [usually] and usually for some common purpose ([like] deliberation and legislation, worship, or social entertainment)." *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1230-31 (11th Cir. 2004). Not only do the Montdel's religious practices constitute an assembly, additionally, the festivals that are held biannually celebrating these religious practices are considered assemblies as well. Thus, making Red Rock a public forum.

Lastly, the Fifteenth Circuit held that Red Rock was a large, open, and remote space that is owned by the State and is occasionally used for expressive activities, and therefore not a public forum. (R. at 39). It is understandable that the Park is a large, open, and remote space owned by the State, but the forum analysis needs to focus on Red Rock. Additionally, *Boardley* held that what makes a park a traditional public forum is that it has "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.” *Boardley*, 615 F.3d at 515. Red Rock has been used historically and traditionally for the purposes of assemblies, either through worship or social entertainment; the activities at these festivals, whether it be through singing or dancing, allow for the communication of thoughts between citizens; and the speeches by environmentalists and naturalists are a discussion of public questions.

Therefore, the Fifteenth Circuit erred in determining that Red Rock was not a public forum because Red Rock has traditionally been open to the public and its intended use is consistent with the purposes of assemblies, communicating thoughts between citizens, and discussing public questions.

III. SINCE RED ROCK IS A PUBLIC FORUM, THE GOVERNMENT CAN IMPOSE REASONABLE RESTRICTIONS ON THE TIME, PLACE, AND MANNER OF PROTECTED SPEECH; HOWEVER, ECIA IS NOT NARROWLY TAILORED TO A COMPELLING GOVERNMENTAL INTEREST AND DOES NOT PROVIDE OPEN AMPLE ALTERNATIVE CHANNELS OF COMMUNICATION.

It is well-settled “that even in a public forum the government may impose reasonable restrictions on the time, place, and manner of protected speech, provided the restrictions ‘are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a [compelling] governmental interest, and they leave open ample alternative channels for communication of information.’” *See Ward v. Rock Against Racism*, 491 U.S. 781 (1989); *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984); *Evans v. Sandy City*, 944 F.3d 847 (10th Cir. 2019); *Frisby v. Schultz*, 487 U.S. 474 (1988); *LaCroix v. Town of Fort Myers Beach, Florida*, 38 F.4th 941 (11th Cir. 2022); *United States v. Whitsitt*, No. 5:22-MJ-00028-DW, 2022 WL 1091346 (D.S.D. April 12, 2022).²

² Petitioner concedes that the ECIA is content neutral and will not discuss in the argument.

- A. The extraction of lithium from Red Rock is not a compelling governmental interest because Delmont is rich in minerals in other areas of the state, which will satisfy its agenda to mitigate fossil fuel extraction, boost the economy, and be a frontrunner for national defense contracting.**

The [compelling governmental] interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest. *Elrod v. Burns*, 427 U.S. 347 (1976). “[A] state may not choose means that unnecessarily restrict constitutionally protected liberty. If the State has open to it a less drastic way of satisfying its legitimate interest, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.” *Id.* at 363 (quoting *Kusper v. Pontikes*, *supra*, 414 U.S., at 59, 94 S.Ct., at 308 (citations omitted)).

For example, to survive constitutional challenges, [the interest] must further some vital governmental end by a means that is least restrictive of freedom of belief and association in achieving that end, and the benefit gained must outweigh the loss of constitutionally protected rights. *Elrod*, 427 U.S. at 362. In *Elrod*, non-civil service employees of the Cook County, Ill., Sheriff’s Office were discharged or threatened with discharge solely because they were not affiliated with or sponsored by the Democratic Party. *Id.* at 347-50. The Court held that though First Amendment rights are not absolute, they may be curtailed only by interests of vital importance, the burden of proving the existence of which rests upon the government. *Id.* at 362-63. The Court reasoned that the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury. *Id.* at 373.

Here, as for the State’s agenda for enacting the ECIA, there are additional places within the state, and even within the Park, that the State can mine for these minerals without destroying Red Rock. [T]he benefit gained must outweigh the loss of constitutionally protected rights. *Elrod*, 427 U.S. at 362. Here, because there are other areas within the State, the benefit of destroying Red

Rock does not outweigh the loss of the Montdel's constitutional right to freedom of speech. Thus, the extraction of lithium from Red Rock is not considered a compelling governmental interest because the State has less drastic way of satisfying its legitimate interest.

B. The extraction of lithium from Red Rock is not narrowly tailored because the regulation does not promote a substantial governmental interest that would be achieved less effectively absent the regulation.

The requirement of narrowly 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 that interest. This requirement demands a "close fit between ends and means" to ensure speech is not sacrificed for efficiency. *See Ward v. Rock Against Racism*, 491 U.S. 781 (1989); *see also Frisby v. Schultz*, 487 U.S. 474 (1988).

For example, the government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals. *Ward*, 491 U.S. at 797. In *Ward*, the city regulated the volume of amplified music at the bandshell to retain the character of the Sheep Meadow and its more sedate activities. *Id.* at 784-85, 792. The Court held that since the guideline allowed the city to control volume without interfering with the performer's desired sound mix, it was not "substantially broader than necessary" to achieve the city's legitimate ends, and thus it satisfied the requirement for narrowly tailoring. *Id.* at 802.

Additionally, a statute is narrowly tailored if it targets and eliminates no more than the exact source of the "evil" it seeks to remedy. *Frisby*, 487 U.S. at 485. In *Frisby*, Schultz and Braun are individuals [who were] strongly opposed to abortion and wished to express their views on the subject by picketing on a public street outside the residence of a doctor. *Id.* at 476. The town passed an ordinance that prohibited all picketing in residential neighborhoods except for labor picketing. *Id.* The Court held that the town's ordinance's complete ban of th[e] particular medium of

expression is narrowly tailored. *Id.* at 487-88. The Court reasoned that because the picketing prohibited by the town's ordinance is speech directed primarily at those who are presumptively unwilling to receive it, the state has a substantial and justifiable interest in banning it; thus, the nature and [the] scope of th[e] interest make the ban narrowly tailored. *Id.* at 488.

Here, any regulation on speech must be justified by the government's goals. The destruction of Red Rock is not justified by the ECIA because it eliminates more than lithium within Red Rock; it also eliminates the Montdel from speaking to their Creator. Additionally, the burden it places on the ability to speak or express ideas should be necessary and effective in achieving those goals. The burden placed on the Montdel's by destroying Red Rock forces them to not have the opportunity to perform their religious practices, and it is not necessary and effective to destroy Red Rock to achieve the State's goals of being energy independent. Therefore, the ECIA is not narrowly tailored.

C. The destruction of Red Rock, the Montdel's sacred, religious site, does not leave open ample channels of communication because Red Rock is the only place where the Montdels can express their protected speech.

Time, place, or manner restrictions must "leave open ample channels for communications of the information." *Ward*, 491 U.S. at 791. While the First Amendment does not guarantee the right to always employ every conceivable method of communication and in all places, a restriction on expressive activity may be invalid if the remaining modes of communication are inadequate. *United States v. Whitsitt*, No. 5:22-MJ-00028-DW, 2022 WL 1091346 (D.S.D. April 12, 2022) (citing *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)). In determining if the remaining modes of communication are adequate, one consideration is whether the target audience can be reached by those modes. 491 U.S. at 802. The speaker must be able to effectively communicate his message to the intended audience in face of the [] restriction[]. *LaCroix v. Town of Fort Myers Beach, Florida*, 38 F.4th 941 (11th Cir. 2022).

For example, alternatives need only exist in some portions of the forum in question, rather than all areas of the forum, if those alternatives provide adequate modes of communication. *United States v. Whitsitt*, No. 5:22-MJ-00028-DW, 2022 WL 1091346 (D.S.D. April 12, 2022). In *Whitsitt*, two men set up a framed banner between the Avenue of Flags and the Grand View Terrace at the Mount Rushmore National Memorial. *Id.* at *1. The two men also had a loudspeaker. *Id.* A park officer approached them and told them they could not use their loudspeaker or display at that location, but they could get a permit and move either to the front walkway or the amphitheater stage. *Id.* Whitsitt stated that 36 C.F.R. § 2.51, a regulation regarding demonstrations in national parks, was facially unconstitutional regarding the right to free speech. *Id.* The court held that the regulation was constitutional because the remaining modes of communication provided were adequate since they were still within the forum in question. *Id.* at *5.

Additionally, open ample alternative channels of communication must be adequate and meaningful, even if it is not the one [someone] would have chosen. *LaCroix*, 38 F.4th at 952. In *LaCroix*, the town of Fort Myers Beach passed an ordinance that prescribed an elaborate permitting scheme for all signs to be displayed within the town, which also prohibited some categories of signs, including portable signs. *Id.* at 945. LaCroix was peacefully attempting to share his religious message on a public sidewalk in the town when he was given a written warning for violating the ordinance's ban on portable signs. *Id.* at 945-46. The court held that the ban left the residents without an effective alternative channel of communication, and it very likely violated the First Amendment, because a speaker must be able to effectively communicate his message to the intended audience in face of the ordinance's restrictions. *Id.* at 952-53.

Here, the law states that open ample alternative channels of communication need only exist in some portions of the forum in question, rather than all areas of the forum, if those alternatives

provide adequate modes of communication. *United States v. Whitsitt*, 2022 WL 1091346 at *5. Red Rock is the forum. Red Rock is the only place where the Montdels can speak to their Creator. Red Rock is being annihilated, therefore, there will be no open ample alternative channels of communication available for the Montdel tribe.

Additionally, a speaker must be able to effectively communicate his message to the intended audience. *LaCroix*, 38 F.4th at 952-53. The intended audience that the Montdel is speaking to is their Creator. If Red Rock is destroyed, based on history and tradition, the Montdel will not be able to speak with their Creator, and thus, denied their First Amendment right to freedom of speech. The land proposed by the State cannot be considered an open ample alternative channel of communication because it is not within the forum, and it is not a location that the Montdel can communicate to their intended audience, their Creator.

Therefore, since Red Rock is a public forum the State can impose reasonable restrictions on the time, place, and manner of protected speech; However, ECIA is not narrowly tailored to a compelling governmental interest and does not provide open ample alternative channels of communication.

IV. THE FIFTEENTH CIRCUIT ERRED IN ITS FAILURE TO RECOGNIZE ITS TRUST OBLIGATIONS TO PROTECT THE MONTDEL'S RIGHTS OF FREE EXERCISE OF RELIGION AND SPEECH.

A. Under the United Nations Declaration on the Rights of Indigenous Persons (UNDRIP), the United States joined the international community in their establishment of a social policy focusing on protecting the inherent rights of Indigenous Persons.

The UNDRIP established a framework for the international community to protect the inherent rights of indigenous persons through several key measures. GA Res. 61/295. Included among these is the right to freely determine the course of their own cultural development. *Id.* Additionally, UNDRIP emphasizes the importance of preserving and protecting the cultural heritage, traditional

knowledge, and practices of indigenous persons, central among these, their religious practices and sacred sites. *Id.*

The declaration mandates that nations take effective measures to ensure that indigenous persons can enjoy their rights to maintain and strengthen their distinct cultural institutions while retaining their right to participate fully in the life of the country. *Id.* This mandate calls for the protection of indigenous lands, territories, and resources. *Id.* UNDRIP also underscores the importance of cooperating with indigenous persons through their own representative institutions before implementing legislative, administrative, or economic measures affecting them. *Id.*

UNDRIP allowed for a comprehensive social policy framework that focuses on protecting rights by promoting self-determination, cultural preservation, non-discrimination, and land and resource protection. *Id.* The United States has agreed to abide by these declarations and that agreement, by default, includes Delmont.

B. Under the American Declaration of the Rights of Indigenous Peoples (ADRIP), the United States has established a policy focusing on protecting the inherent rights of Native Americans.

In 2016, the Organization of American States (OAS) adopted ADRIP. AG/RES. 2888 (June 15, 2016). OAS is the voice of 35 member countries to include the United States. *Id.* The Declaration acknowledges rights to cultural integrity, including recognition and respect for their ways of life, and more specifically, their distinctive relationship with the land. *Id.* Montdel United has asked for the State to standby these words with decisions that endorse a policy to the free exercise of religion and freedom of speech, respectfully collaborate with the Montdels on decisions affecting land use, institute legal protections from violators, and take a strong stand against the adverse impacts of environmental and land use policies on Indigenous religious practices.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court reverse the Circuit Court's decision and remand the case to the district court for further proceedings consistent with this reversal.

APPENDIX A

TABLE OF ABBREVIATIONS

ADRIP	American Declaration on the Rights of Indigenous People
AIRFRA	American Indian Religious Freedom Restoration Act
BOEM	Bureau of Energy Management
DNRA	Delmont National Resources Agency
DMC	Delmont Mining Company
ECIA	Energy and Conservation Independence Act
FNRDA	Federal National Resources Defense Act
ICC	Interstate Commerce Commission
OAS	Organization of American States
RFRA	Religious Freedom Restoration Act
UNDRIP	United Nations Declaration on the Rights of Indigenous People

APPENDIX B

Relevant Constitutional and Statutory Provisions

1. U.S. Constitution.

(a) U.S. Const. art. III, § 2. Limits the judicial power of the United States to "Cases" and "Controversies." This requirement ensures that federal courts only adjudicate actual disputes where the plaintiff has a personal stake in the outcome. "The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority"

(b) U.S. Const. amend. I. "Congress shall make no law respecting an establishment of religion or prohibiting the free 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."

(c) U.S. Const. amend. XIV, § 1. "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."

2. Relevant Statutes.

(a) 28 U.S.C. § 1257. *State courts; certiorari*. The government is prohibited from substantially burdening a person's religious exercise unless its action furthers a compelling governmental interest and is the least restrictive means of furthering that interest.

(b) 28 U.S.C. 1254. *Courts of appeals; certiorari; certified questions*. "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy."

(c) 28 U.S.C. 1331. *Federal question*. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

(d) 42 U.S.C. § 1996. *American Indian Religious Freedom Act (AIRFA)*. Dictates 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 of the American Indian. . . . including but not limited to . . . the freedom to worship through ceremonials and traditional rites."

(e) 42 U.S.C. § 2000bb-1. *Religious Freedom Restoration Act (RFRA)*. Statute prohibits the government from substantially burdening a person's religious exercise unless its action; (a) furthers a compelling governmental interest, and (b) is the least restrictive means of furthering that interest.

(f) Alaska Stat. § 27-19100. *Reclamation*. A mining operation shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.

(g) Cal. Pub. Res. Code § 25232. *Energy Conservation and Development*. [U]sing existing budgetary resources, the State Energy Resources Conservation and Development Commission

shall establish, within the commission, and convene the Blue-Ribbon Commission on Lithium Extraction in California.

(h) LVMC 11.68.100. *Las Vegas Municipal Code on Prohibited—Special Conditions on Fremont*. The following are prohibited within the Fremont Street Pedestrian Mall: Parades, sleeping or camping, littering, sexually oriented businesses, feeding birds, animals (service animals excluded), vending, unicycles, bicycles, skateboards, roller & in-line skates, hula hoops greater than 4' in diameter, any cart, wagon, table, rack, chair, box, cloth, stand, booth, container, amplified sound, launching/throwing projectiles, private entertainment, food, tobacco items, commercial photography, filming/videotaping, street performances, open flames, generators, lead acid batteries, or lying/sitting on the ground, any one of which is allowed in an emergency or as authorized by the Fremont Street Experience Limited Liability Company.

(i) MCLS § 324.63205. *Michigan Natural Resources Protection Act of 1994*. An environmental impact assessment for the proposed mining operation . . . that may be impacted by the mining and the potential impacts on those features from the proposed mining operation. The environmental impact assessment shall define the affected area and shall address feasible and prudent alternatives.

(j) N.M. Stat. Ann. § 69-36-3. *Mining*. [T]he director for an inspection of the reclaimed areas [will] determine whether the completed reclamation satisfies the requirements of the New Mexico Mining Act and the substantive requirements for reclamation pursuant to the applicable regulatory standards.

(k) S.D. Codified Laws § 45-68-74. *South Dakota Mining, Oil, and Gas*. The Board of Minerals and Environment may initiate and encourage studies and programs through the Department of Environment and Natural Resources and in other agencies and institutions of state government

relating to the development of less destructive methods of mining operations, better methods of land reclamation, [and] more effective reclaimed land use.

(l) Utah Code Ann. § 40-8-24. *Brine Mining*. Outlines the regulatory framework for brine mining operations within the state. The statute mandates that the division conduct a study to evaluate current and potential regulations of brine mining operations.

(m) Utah Code Ann. § 4065-A-6-4. *Definitions of the Utah Code*. Definitions are crucial for interpreting various provisions within the Utah Code and ensuring consistent application of the law.

3. Regulations.

(a) 36 C.F.R. 251. *Public Assemblies, Meetings*. Outlines the regulations for public assemblies, meetings, gatherings, demonstrations, parades, and other public expressions of views, within national parks.

(b) Exec. Order No. 13007, 3 C.F.R. 196 (1996). *Indian Sacred Sites*. Order signed by President Clinton to "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites."

4. Other Authorities.

(a) AG/RES. 2888 (XLVI-O/16). *Am. Declaration on the Rts. of Indigenous Peoples* (ADRIP). A declaration of the Organization of American States creating the government's trust obligation to protect Native American culture and religion.

(b) G.A. Res. 61/295. *U.N. Declaration on the Rts. of Indigenous Peoples* (UNDRIP). The Declaration emphasizes the rights of indigenous peoples to their lands, territories, and resources, and the need for states to consult and cooperate in good faith with indigenous peoples to obtain their free, prior, and informed consent before adopting measures that may affect them. It also

articulates the right of indigenous peoples to maintain and strengthen their spiritual relationship with their traditionally owned lands and resources.

CERTIFICATE OF COMPLIANCE

No. 24-CV-1982

MONTDEL UNITED,

Petitioner;

v.

STATE OF DELMONT and

DELMONT NATURAL RESOURCE AGENCY,

Respondents,

We hereby certify that the Appellate Brief of Montdel United, in support of Petitioner, School No. 017:

- 1) is the work product of the team members;
- 2) that the team has complied fully with our Law School's governing honor code; and
- 3) that the team has complied with all Competition Rules.

s/Kathleen T. McBride
Kathleen T. McBride

s/Kathleen B. McGovern
Kathleen B. McGovern