No. 24-CV-1982

IN THE SUPREME COURT OF THE UNITED STATES
JANUARY TERM 2025

MONTDEL UNITED,

Petitioner,

v.

STATE OF DELMONT and
DELMONT NATURAL RESOURCES AGENCY,

Respondent.

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

BRIEF FOR RESPONDENT

Oral Argument Requested

January 31, 2025

Team 018
Attorneys for Respondent

QUESTIONS PRESENTED

I. Did the circuit court correctly find that the Government's enactment of the ECIA and subsequent transfer of Red Rock did not violate the First Amendment Free Exercise rights of Petitioner, when the Government exercised its authority to repurpose land it owned, causing Petitioner to relocate its religious ceremonies just five miles down the river while otherwise preserving its ability to continue its traditions?

II. Did the circuit court correctly find that the Government's enactment of the ECIA and subsequent transfer of Red Rock did not violate the First Amendment Free Speech Rights of Petitioner, when the Government, after accommodating Petitioner's religious ceremonies on state-owned land for four days each year, lawfully exercised its right to repurpose the challenging geography of Red Rock to develop North America's largest lithium-deposit with substantiated economic and environmental interests?

TABLE OF CONTENTS

QUESTIONS PRESENTED…………………………………………….……………………i

TABLE OF CONTENTS…………………………………………………….…….…………ii

TABLE OF AUTHORITIES…………………………………………….…….………......iv

OPINIONS BELOW……………………………………………………..………..………vi

STATEMENT OF JURISDICTION…………………………………………......…..…vi

CONSTITUTIONAL AND STATUTORY PROVISIONS…………………...……......……vi

STATEMENT OF THE CASE…………………………………………………………..1

SUMMARY OF THE ARGUMENT…………………………………………………6

ARGUMENT……………………………………………………………………………..8

I. THE ECIA AND SUBSEQUENT TRANSFER OF RED ROCK DOES NOT VIOLATE THE FIRST AMENDMENT FREE EXERCISE RIGHTS OF PETITIONER BECAUSE IT DOES NOT PROHIBIT THE FREE EXERCISE OF THEIR RELIGION……………………………………………………………......…...8

A. The Government's Actions Do Not Coerce Petitioner into Violating the Tenets of Their Religion or Penalize Their Religious Activity By Incidentally Causing the Relocation of Their Religious Practice, While Otherwise Preserving Petitioner's Ability to Practice Their Religion…………………………………………..…..8

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 NONPUBLIC FORUM AND THE GOVERNMENT'S JUSTIFICATION FOR RESTRICTING SPEECH IS REASONABLE AND VIEWPOINT NEUTRAL……………………………………………………..…….14

A. Red Rock is a Nonpublic Forum Because It Fundamentally Differs From Traditional Public Fora and the Government Did Not Display an Intent to Open It For Public Discourse as a Designated Public Forum..15

1. *Red Rock is not a traditional public forum because it is a remote and undeveloped area with a history of limited and inconsistent use for expressive activity*…………………………………………………………..…16

2. *Red Rock is not a designated public forum because there is insufficient evidence of governmental intent to open it for public discourse*………………………..20

B. The Government's Restriction of Speech Satisfies the Standard of Review for a Nonpublic Forum Because It Is Reasonable And There Is No Evidence That Its Restriction Is Based On a Disagreement With the Content or Viewpoint of Petitioner's Speech…………………………………………………………..…..…22

CONCLUSION……………………………………………………………………….....25

TABLE OF AUTHORITIES

United States Supreme Court Cases

Adderley v. Florida,

385 U.S. 39 (1966)……………………………………………………...……22, 23, 24, 25

Cantwell v. Connecticut,

310 U.S. 296 (1940)………………………………………………...……………..…8

Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.,

473 U.S. 788 (1985)…………………………………………..…...……..15, 16, 21, 22, 23

Emp. Div., Dep't of Hum. Res. of Or. v. Smith,

494 U.S. 872 (1990)…………………………………………………………...……..8

Gitlow v. New York,

268 U.S. 652 (1925)…………………………………...……………………...…14

Greer v. Spock,

424 U.S. 828 (1976)…………………………………………………...……..…17, 19

Hague v. CIO,

307 U.S. 496 (1939)…………………………………………………………..………..16

Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.,

452 U.S. 640 (1981)……………………………………………………………...17, 18, 19

Int'l Soc'y for Krishna Consciousness v. Lee,

505 U.S. 699 (1992)……………………………………………………………………...25

Lyng v. Nw. Indian Cemetery Protective Ass'n,

485 U.S. 439 (1988)…………………………………………...…8, 9, 10, 11, 12, 13, 14

Members of City Council of City of L.A. v. Taxpayers for Vincent,

466 U.S. 789 (1984)……………………………………………………………...……23

Perry Educ. Ass'n v. Perry Local Educators' Ass'n,

460 U.S. 37 (1983)…………………………………………...…..15, 16, 19, 20, 22

Sherbert v. Verner,

374 U.S. 398 (2021)……………………………………………………….....…9, 11, 12

Southeastern Promotions, Ltd. v. Conrad,

420 U.S. 546 (1975)……………………………………………………………...…16

United States Court of Appeals Cases

Apache Stronghold v. United States,

101 F.4th 1036 (9th Cir. 2024)……………………………………...……10, 11, 13

Boardley v. U.S. Dep't of Interior,

615 F.3d 508 (D.C. Cir. 2010)……………………………………...……15, 16, 19

Fillyaw v. Naturist Soc'y, Inc.,

958 F.2d 1515 (11th Cir. 1992)…………………………………...........……18, 20

Satanic Temple v. City of Belle Plaine,

80 F.4th 864 (8th Cir. 2023)……………………………………………………...25

Seattle Mideast Awareness Campaign v. King Cnty.,

781 F.3d 489 (9th Cir. 2015)…………………………………………………..……20

State Court Cases

Leydon v. Town of Greenwich,

777 Conn. 552 (2001)…………………………………………………..……18, 20

State v. Ball,

260 Conn. 275 (2002)……………………………..…………………………..…18, 20

OPINIONS BELOW

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*, No. 24-CV-1982 (D. Delmont March 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*, No. 24-CV-1982 (15th Cir. Jan. 5, 2025).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on November 11, 2024. R. at 33. Petitioner then filed a writ of certiorari, which this Court granted on January 5, 2025. R. at 54. This Court has jurisdiction pursuant to 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution states: "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." U.S. Const. amend. I.

STATEMENT OF THE CASE

Statement of Facts

The State of Delmont and the Delmont Natural Resources Agency (the "Government") are lawfully managing the State's natural resources to seize an unparalleled economic opportunity, ensuring they are utilized wisely and equitably for the benefit of all citizens. Among the State's most treasured assets is Painted Bluffs State Park, a nearly 100-square-mile area of forested highlands, R. at 2, known for its "striking rock formations," R. at 4. Montdel United (the "Petitioner"), an Indigenous Native American group with historical ties to the region, once conducted spiritual rituals within the area now encompassed by the park. R. at 2. These rituals, "[a]ccording to Montdel oral histories," have occurred "uninterrupted since before recorded history," consistently taking place at Red Rock, a prominent landmark within the park. R. at 2-3. The rituals, occurring just four days a year, R. at 4, are performed in a collective supplicatory manner believed to connect them with their Creator. R. at 3. While these practices are deeply rooted in Petitioner's oral traditions, their exact significance has evolved over time as Petitioner's community assimilated into other Indigenous groups and broader society. *Id*. By the latter part of the nineteenth century, Petitioner existed more as a cultural memory then as a distinct group, with just a few thousand individuals. *Id*.

Thus, when Delmont achieved statehood in 1855, no treaties or agreements were made with Petitioner. R. at 3-4. Further, as a result of the "challenging geography," Red Rock and the surrounding area were never claimed by settlers. R. at 4. Nevertheless, Petitioner occasionally made the trip to Red Rock at designated times, though participation levels were inconsistent. *Id*. The rituals lacked regularity and were skipped during periods of "economic hardship," as other challenges took precedence. *Id*.

In 1930, "Painted Bluffs State Park was acquired by the State of Delmont . . . with the intent to preserve its natural beauty," establishing it as a state park. R. at 4. In doing so, the State ensured public access to its rock formations and natural features, including hiking, camping, and fishing opportunities. R. at 4. While Petitioner continued their rituals at Red Rock, the State never "impeded the [Petitioner's] religious observances nor restricted access to Red Rock or the Painted Bluffs areas." R. at 4. In recognition of Petitioner, however, the State always made sure to reference Petitioner's religious practices in promoting the park. *Id*. In fact, Governor Rupert Ridgeway went out of his way to acknowledge Petitioner's legacy during the park's dedication, R. at 4, stating that their rituals are "part of a legacy that the state proudly cherishes," R. at 5.

By the mid-twentieth century, efforts to revitalize Petitioner's traditions formalized into practices known as the "Montdel Observance," attracting both individuals with Petitioner's ancestry and others interested in their cultural history. *Id*. Over time, these observances evolved into broader cultural festivals, particularly during the equinoxes, featuring music, art, and environmental advocacy. *Id*. These festivals, while growing in size and scope, have incorporated diverse participants, many of whom are not Petitioner's heritage. *Id*.

Meanwhile, the State of Delmont, is renowned for its mineral-rich geology, with mining being a "significant portion" of the State's economy. R. at 6. Geologists have long recognized that Painted Bluffs State Park area contains lithium-bearing pegmatite deposits. *Id*. In fact, two decades ago, a geological study uncovered that the lithium deposits in Painted Bluffs State Park, especially near the Red Rock region, are the largest ever discovered in North America. R. at 7. The State also contains substantial reserves of coppers, iron, nickel, and other minerals. R. at 6. Naturally, mining companies began pursuing access to these valuable deposits from the State. R. at 7. While the State had explored legislation to enable the transfer of these rights over the past ten years, it had yet to

enact any such laws. *Id*. Knowing full well that mining companies were seeking rights to the Painted Bluffs area, a nonprofit named "Montdel United" was started in 2016 by descendants of Petitioner. *Id*. The nonprofit opposed the transfer of Painted Bluffs State Park, citing the cultural significance of Red Rock. *Id*.

Come 2021, however, the State initiated a noble agenda with the goal of mining lithium, nickel, iron, and copper to reduce fossil fuel dependency and bolster its economy. R. at 6. To support this vision, the Delmont legislature passed the Energy and Conservation Independence Act ("ECIA"), which empowers the State to enter into land transfer agreements with private mining companies for the extraction of their precious minerals. *Id*. These land transfers are overseen by the Delmont Natural Resources Agency ("DNRA"), which operates under the authority granted by the ECIA. *Id*. Under the ECIA, the land transfers undergo a thorough evaluation. *Id*. Each land transfer "must be independently appraised to ensure equivalent value." *Id*. Thereafter, each transfer is subject to both environmental and economic impact studies. *Id*. Only upon the completion of these studies does the DNRA have a sixty-day period to determine if the transfer should move forward. *Id*.

In January 2023, the DNRA approved the transfer of one-fourth of Painted Bluffs, including Red Rock, to Delmont Mining Company ("DMC"). R. at 7. The decision, made under the ECIA, was met with approval from residents of nearby "economically challenged counties," who have heavily relied on insufficient tourism as their economic foundation. *Id*. The land to be exchanged for Painted Bluffs was determined to be of equal value and located in another region of the state. R. at 8. Following the ECIA's guidelines, the DNRA initiated an environmental and economic impact study to analyze the proposed transfer. *Id*.

The environmental impact study showed that the mining operations will ultimately transform Red Rock into a water-filled quarry. *Id*. This transformation, coupled with rock shearing and erosion, will make the site unsafe for visitors. *Id*. Reclamation of the area is expected to be impractical. *Id*. Nevertheless, the environmental study confirmed that the project would not significantly harm local wildlife or ecosystems. *Id*. The local flora and fauna would remain largely undisturbed, and once operations conclude in approximately twenty years, much of the park could be reclaimed. *Id*. As a practical outcome of the mining operations, festival participants would relocate their equinox festivals just five miles downstream along the Delmont River, while otherwise continuing their traditions. *Id*. Despite the overall minimal impact, the DNRA went so far as to consider alternative mining technologies to minimize the impact on Red Rock. *Id*. The report revealed that such technologies would reduce the impact to Red Rock, but still cause significant alteration. *Id*. But, these alternative technologies remain in development and are unlikely to be viable for at least two decades. R. at 8-9. Further, even if they became feasible, high costs, long implementation times, and uncertain environmental effects make them impractical solutions at the time. R. at 9.

After thorough evaluation, the DNRA approved the land transfer, citing practical economic and policy considerations. *Id*. First, lithium extraction would support the State's goal in transitioning away from fossil fuels, while also aligning with a federally mandated national objective. *Id*. Second, waiting for alternative mining technologies, which remain at least two decades from feasibility, was deemed impractical. *Id*. Third, the economic impact study showed that the mining operations would result in a "substantial economic boost to the local economy." *Id.* Fourth, the DNRA reaffirmed that while the State had respectfully accommodated Petitioner

for a long time, it retained the authority to manage public land in the best interest of all citizens, not just Petitioner. *Id*.

In response, Petitioner attempted to challenge the decision by citing two past instances in which the DNRA withdrew from land transfer agreements with two mining companies. *Id*. The first agreement involved a proposed land transfer to Granite International, Inc., and was canceled after the environmental impact study revealed that the nickel extraction process would destroy the habitat of two endangered species. R. at 9-10. The second agreement involved a proposed land transfer with McBride Brine Mining, Inc., and it was eventually canceled when the environmental impact study revealed that there was a risk of water contamination affecting an aquifer that supplied reserve water to state residents. R. at 10. As if the preceding reasons were not enough, the DNRA provided evidence that further reinforced the rationale behind its decision. *Id*. For one, the economic impact studies demonstrated that the mineral deposits associated with the previously withdrawn agreements were far less substantial than the exceptionally rich lithium reserves found in Painted Bluffs. *Id*. In addition, the DNRA pointed to a separate instance in which it proceeded with a land transfer for a major iron deposit to Granite International, even in the face of strong statewide opposition. *Id*.

Ultimately, the transfer was finalized on April 1, 2023. R. at 9. The DMC company plans to begin operations immediately. *Id*. Once the transfer is complete, the area will be privately owned by DMC and will only be accessible to DMC and its employees. *Id*.

Procedural History

Following the DNRA's final decision approving the land transfer, Petitioner sought a temporary restraining order and injunctive relief in the United States District Court for the District of Delmont, Western Division. R. at 10. Petitioner argued that the transfer violated their First

Amendment rights to free speech and free exercise of religion. *Id*. The court denied the temporary restraining order and scheduled a hearing to determine whether a preliminary injunction should be granted. *Id*.

The district court granted the preliminary injunction. R. at 32. The court held that the ECIA and transfer of Red Rock effectively prohibited Petitioner's religious exercise. R. at 27. It further reasoned that the ECIA was not a neutral and generally applicable law, R. at 29, that ultimately failed to survive strict scrutiny, R. at 31. Additionally, it held that Red Rock was a traditional public forum, R. at 17, and the Government's justification for its restriction of expressive activity was not narrowly tailored to serve a significant governmental interest, R. at 25.

On appeal, the United States Court of Appeals for the Fifteenth Circuit reversed the decision. R. at 45. It concluded that the land transfer did not violate Petitioner's free exercise rights, as there was no coercive prohibition on their religious practice. *Id*. The court further held that Red Rock was a nonpublic forum, R. at 40, and that the Government's justification for its restriction of expressive activity met the requisite standard as both reasonable and viewpoint neutral, R. at 41-42. This Court granted certiorari. R. at 55.

SUMMARY OF THE ARGUMENT

State governments must prioritize the broader public interest when presented with a unique opportunity, and while the impact on a select few is regrettable, it cannot undermine the significant benefits to society as a whole. The present case addresses the issue of whether the ECIA and subsequent transfer of Red Rock violates the First Amendment Free Exercise rights of Petitioner as well as the First Amendment Free Speech rights of Petitioner.

First, this Court should affirm the circuit court's holding that the ECIA and subsequent transfer of Red Rock does not violate the First Amendment Free Exercise rights of Petitioner. For

the protections of the Free Exercise Clause to apply, the government action must prohibit the free exercise of religion. To show the existence of a prohibition, Petitioner must show that the Government's actions have either coerced them into violating the tenets of their religion or have penalized them by denying a right otherwise available to other citizens. The ECIA and subsequent transfer of Red Rock does not amount to a Government coercive prohibition of Petitioner's free exercise of religion because the Government actions merely results in the incidental relocation of Petitioner's religious practice just five miles down the river, while otherwise preserving their right to do so. To recognize the Government's actions as a prohibition would undermine effective land management and broader public interests of the State.

Second, this Court should affirm the circuit court's holding that the ECIA and subsequent transfer of Red Rock does not violate the First Amendment Free Speech rights of Petitioner. After establishing that the expressive activity at issue is speech, the analysis of free speech claims involves two steps: (1) the forum must be identified, and (2) the government's justification must be assessed to determine if it satisfies the requisite standard for the identified forum. The forum at hand, Red Rock, is a nonpublic forum because it fundamentally differs from traditional public fora and the Government did not display an intent to open it for public discourse. Moreover, the government's justification for restricting Petitioner's expressive activity satisfies the requisite standard of being reasonable and viewpoint neutral. The ECIA and transfer of Red Rock was done with reasonable economic and environmental interests in mind and there is no evidence in the record that the Government objected to the viewpoint of Petitioner's religious rituals.

ARGUMENT

I. THE ECIA AND SUBSEQUENT TRANSFER OF RED ROCK DOES NOT VIOLATE THE FIRST AMENDMENT FREE EXERCISE RIGHTS OF PETITIONER BECAUSE IT DOES NOT PROHIBIT THE FREE EXERCISE OF THEIR RELIGION.

The Free Exercise Clause of the First Amendment, made applicable to the states by incorporation into the Fourteenth Amendment, *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I. For the First Amendment's protections to apply, the government action must, in fact, "*prohibit[]* the free exercise," *id.* (emphasis added), of religion. *See Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 452 (1988). A prohibition exists when a claimant is either "coerced by the Government's action into violating their religious beliefs" or when the government action effectively penalizes the claimant by denying them an "equal share of the rights, benefits, and privileges enjoyed by other citizens." *Id*. at 449. Upon showing the existence of a prohibition, the government action is subject to strict scrutiny if it is not neutral or generally applicable. *Emp*. *Div*., *Dep't of Hum*. *Res*. *of Or*. *v*. *Smith*, 494 U.S. 872, 879 (1990).

In this case, the ECIA and subsequent transfer of Red Rock does not violate the First Amendment free exercise rights of Petitioner. These Government actions do not prohibit Petitioner's free exercise of religion, making the First Amendment protections inapplicable. The relocation of the Petitioner's religious practice five miles down the river neither coerces them to violate their beliefs nor imposes a penalty on their religious activities. Accordingly, the circuit court's decision should be affirmed.

A. The Government's Actions Do Not Coerce Petitioner into Violating the Tenets of Their Religion or Penalize Their Religious Activity by Incidentally Causing the Relocation of Their Religious Practice, While Otherwise Preserving Petitioner's Ability to Practice Their Religion.

Essentially, "[t]he crucial word in the constitutional text is 'prohibit,': 'For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.'" *Lyng*, 485 U.S. at 451 (quoting *Sherbert*, 374 U.S. at 412) (Douglas, J., concurring). Notably, "prohibit," as stated in the Free Exercise Clause, does not protect against government action that "frustrates or inhibits religious practice," as the "Constitution . . . says no such thing." *Id.* at 456. While the precise line between unconstitutional prohibitions on the free exercise of religion and permissible government actions is unclear, it cannot "depend on measuring the effects of a governmental action on a religious objector's spiritual development." *Id*. at 452.

A prohibition does not exist when government actions make religious practice more difficult, but do not coerce an individual into violating his or her beliefs. *Id*. at 450-51. In *Lyng*, the government's plan to build a road through sacred Native American land was challenged on free exercise grounds. *Id*. at 443. Despite knowing the land's religious significance and the tribe's opposition, the government intentionally selected that property for the project. *Id*. The Court held that the Free Exercise Clause does not protect against "the incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs." *Id*. at 450-51. The government, it concluded, is not obligated to meet "every religion's needs and desires," *id*. at 452, even if, in this case, the "road will virtually destroy the . . . Indians' ability to practice their religion," *id*. at 451. In this regard, the Court acknowledged that in light of how diverse our society is, "[t]he Constitution does not, and courts cannot, offer to reconcile the various competing demands on government," many of which are rooted in deeply held religious convictions. *Id*. at 452. The Court further noted that "no disrespect for these practices is implied" when one

recognizes that Native American beliefs "could easily require de facto beneficial ownership of some rather spacious tracts of public property." *Id*. at 454. For instance, in this case, the result of granting a permanent injunction would have been "far from trivial," as it would have blocked the construction of a two-lane road covering over seventeen thousand acres. *Id*. at 452. In conclusion, the Court determined that without coercion and given the broader public policy concerns, the Free Exercise Clause was not implicated. *Id*. at 452.

In keeping with *Lyng*, the Ninth Circuit held similarly in *Apache Stronghold v. United States*, 101 F.4th 1036, 1052 (9th Cir. 2024). In *Apache*, Congress authorized the transfer of federal land to a mining company, threatening to destroy Oak Flat, a sacred site for the Apache Native Americans. *Id*. at 1044. The Apache sought an injunction against the transfer on the grounds that it violated the Free Exercise Clause, claiming that Oak Flat was the only place on earth that enabled them to directly speak to their creator. *Id*. at 1044-45. The Apache made various arguments as to why the land transfer of Oak Flat was distinguishable from *Lyng*. *Id*. at 1052. First, the Apache argued that the transfer involved physical destruction of the site, unlike the subjective interference at issue in *Lyng*. *Id*. The court dismissed this distinction, noting that *Lyng* also involved a road project that would "*physically* destroy the environmental conditions" necessary for religious practices, *id*. (quoting *Lyng*, 485 U.S. 449), while also establishing that all incidental interference is subject to the same constitutional standard, *id*. (citing *Lyng*, 485 U.S. at 449-50). Second, the Apache argued that *Lyng* was distinguishable because it involved a law of neutral and general applicability. *Id*. at 1053. The court rejected this argument as well, stating that "*Lyng* itself makes clear, [the law] was *not* a neutral and generally applicable law," because it was directed at one particular piece of property. *Id*. (citing *Lyng*, 485 U.S. at 444). Thus, since the Apache could not

properly distinguish the transfer of Oak Flat from *Lyng*, the court denied the preliminary injunction. *Id*. at 1055.

Conversely, a government action constitutes a prohibition on religious exercise when it forces one to choose between violating the tenets of their religion or ceasing religious expression altogether. *See Sherbert v. Verner*, 374 U.S. 398, 403-04 (2021). In *Sherbert*, the plaintiff was fired for refusing to work on the Sabbath observed by her faith. *Id*. at 399. After filing for unemployment compensation, the plaintiff was denied by the defendant for failing to accept suitable work without good cause. *Id*. at 401. The plaintiff claimed this denial violated her right to freely exercise her religion. *Id*. The Court noted that the plaintiff was not only denied eligibility for benefits "solely" because of the practice of her religion but was also "pressured" to violate the practice of her religion. *Id*. at 404. This, the Court reasoned, was akin to penalizing her for observing her Sabbath. *Id*. at 406. As a result, the Court held that the denial of benefits violated her right to freely exercise her religion. *Id*.

The ECIA and subsequent transfer of Red Rock does not prohibit Petitioner's free exercise of religion. As a result, the protections of the First Amendment do not apply. First, similar to *Lyng*, this case involves government-authorized actions on public land that impact religious practices but do not coerce individuals into violating their beliefs. 485 U.S. at 450-51. In *Lyng*, the construction of a road through a sacred site threatened to "virtually destroy the . . . Indians' ability to practice their religion." *Id*. at 451-52. Here too, the transfer of Red Rock could significantly impact Petitioner's religious practices, as access to their creator depends on ceremonial rituals performed at Red Rock. R. at 3. But, as this Court held in *Lyng*, the Free Exercise Clause does not protect against the "incidental effects of government programs, which may make it more difficult to

practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs." 485 U.S. at 450-51.

The Government's actions neither coerce Petitioner into violating the tenets of their religion nor do they penalize Petitioner's religious activity. In *Sherbert*, the government conditioned the plaintiff's receipt of unemployment benefits on her willingness to violate her religious tenets. 374 U.S. at 404. Here, however, the Government's decision to transfer Red Rock does not impose an indirect penalty or condition upon Petitioner's ability to practice their religion. The impact of the land transfer is simply an *incidental* consequence of the Government's broader decision to repurpose land it rightfully owns. R. at 9. Moreover, the government action in *Sherbert* was driven "solely," by the plaintiff's religious practices. 374 U.S. at 404. In contrast, the ECIA and transfer of Red Rock cannot be characterized as motivated "solely" by Petitioner's religion. The Government's decision to approve the land transfer was based on a range of considerations – none of which involved Petitioner's religious practices. R. at 9. These included the State's broader economic and environmental goals, such as reducing fossil fuel use and promoting economic development in the surrounding counties. *Id*.

Second, the facts in *Lyng* cannot meaningfully be distinguished from the case at hand, placing these facts squarely within the framework established in *Lyng*. The district court argued that *Lyng* is not applicable because it involved application of a neutral and generally applicable law. R. at 29. But, as the Ninth Circuit explained, "*Lyng* itself makes clear, [the law] was *not* a neutral and generally applicable law," since the legislative action was directed at one particular piece of property. *Id*. (citing *Lyng*, 485 U.S. at 444). In fact, the government intentionally select the property sacred to the Native Americans despite knowing the land's religious significance and the tribe's opposition. *Lyng*, 485 U.S. at 443. Moreover, to argue that this case differs from *Lyng*

due to the physical destruction of a sacred site would be futile. For one, the Ninth Circuit, again, disproved this assertion as factually incorrect because *Lyng* involved a road project that would "*physically* destroy the environmental conditions" necessary for religious practices. *Apache,* 95 F.4th at 623 (quoting *Lyng*, 485 U.S. 439). But more than that, in keeping with *Lyng*, it held that the focus remains on the nature of the government action, not on the severity of its impact. *Id*. at 623 (citing *Lyng* 485 U.S. at 449-50). Petitioner would have this Court divert its focus from the nature of the Government's actions to its impact, just as the district court did, when it asserted that it is "obvious at first blush" that the destruction of a religious group's sole site for worship constitutes a prohibition. R. at 26. Yet, the precise line between unconstitutional prohibitions on the free exercise of religion and permissible government action cannot "depend on measuring the effects of a governmental action on a religious objector's spiritual development. *Id*. at 452.

Third, if the ECIA and transfer of Red Rock were to constitute a prohibition, Native American religious practices – and potentially religious beliefs at large – could effectively gain veto power over federal land management. In *Lyng*, this Court aptly expressed this concern in speaking of the Native American practice at issue in the case, stating, "[n]o disrespect for these practices is implied" when one recognizes that Native American religious practices "could easily require *de facto* beneficial ownership of some rather spacious tracts of public property." 485 U.S. at 454. Essentially, this could place the government in a position where nearly every decision is subject to the approval of those claiming religious significance. Such personalized oversight would severely limit the government's ability to manage public lands effectively. More concerning still, doing so could set a dangerous precedent where specific religious beliefs are prioritized over broader public needs. In *Lyng*, the result of granting a permanent injunction would have been "far from trivial," as it would have blocked the construction of a two-lane road over seventeen thousand

acres. *Id*. But, here, the stakes go well beyond just blocking a road; such a ruling could stifle economic revitalization in the surrounding communities and hinder efforts to address a global climate crisis. R. at 9. In short, recognizing the transfer of Red Rock as a prohibition would undermine both effective land management and broader public interests.

Fourth, recognizing the transfer of Red Rock as a prohibition would place an overwhelming burden on courts. This, too, was a concern expressed in *Lyng*, as this Court warned that "[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, that inevitably arise in so diverse a society as ours." 485 U.S. at 452. To impose such a burden would force courts to navigate an unworkable maze of competing religious claims. For this reason, the government is not and cannot be obligated to meet "every religion's needs and desires." *Id*.

In the end, Petitioner proposes an approach to the First Amendment that is fundamentally inconsistent with the text of the Constitution and the precedents of this Court. While the impact of the Montdel Observance is regrettable, the nature of the government action does not coerce Petitioner into violating their religious beliefs nor does it penalize their right to freely exercise their religion. Therefore, no prohibition exists, and the protections of the First Amendment do not apply.

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 NONPUBLIC FORUM AND THE GOVERNMENT'S JUSTIFICATION FOR RESTRICTING SPEECH IS REASONABLE AND VIEWPOINT NEUTRAL.

The First Amendment, applicable to the states through the Fourteenth Amendment, *see Gitlow v. New York*, 268 U.S. 652, 666 (1925), declares that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. The analysis of claims under the Free

Speech Clause of the First Amendment involves three steps. *Boardley v. U.S. Dep't of Interior*, 615 F.3d 508, 514 (D.C. Cir. 2010). First, it is necessary to determine whether the activity at issue constitutes speech protected by the First Amendment, "for if it is not, we need not go further." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985). Second, the forum where the alleged infringement occurred must be identified, as the government's authority to regulate speech depends on the forum's classification. *Id*. And third, the government's justification for restricting speech in the identified forum must be assessed to determine if it "satisf[ies] the requisite standard." *Id*.

There is no dispute regarding the first step of this analysis, as the proposed sale restricts Petitioner's expressive activity by limiting access to government property. R. at 12. However, applying the second and third steps to the present case, the ECIA and subsequent transfer of Red Rock does not violate the First Amendment free speech rights of Petitioner. First, the public forum at issue – Red Rock, a portion of Painted Bluffs State Park – falls within the category of a nonpublic forum. Second, as a nonpublic forum, the government's restriction of speech satisfies the requisite standard because it is reasonable and viewpoint neutral. Consequently, the circuit court's decision should be affirmed.

A. Red Rock is a Nonpublic Forum Because It Fundamentally Differs From Traditional Public Fora and the Government Did Not Display an Intent to Open It For Public Discourse as a Designated Public Forum.

This Court has established three categories of public fora: (1) the traditional public forum, (2) the designated public forum, and (3) the nonpublic forum. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45-46 (1983). The traditional public forum includes spaces, like streets and parks, that "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." *Id*. at 45 (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). The designated public forum refers to public property intentionally opened by the state for expressive activities, *id*., such as municipal theaters made available to the general public, *see Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552 (1975). In contrast, a nonpublic forum is "[p]ublic property which is not by tradition or designation a forum for public communication." *Perry*, 460 U.S. at 46.

1. Red Rock is not a traditional public forum because it is a remote and undeveloped area with a history of limited and inconsistent use for expressive activity.

Traditional public fora are "places which by long tradition or by government fiat have been devoted to assembly and debate." *Cornelius*, 473 U.S. at 802. Both streets and parks are quintessential examples of traditional public fora and their use has "from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens." *Hague*, 307 U.S. at 515.

The key inquiry is not on the forum's government-assigned label but on its purpose, determined by tradition or specific designation. *Boardley*, 615 F.3d at 515. In *Boardley*, the plaintiff challenged permit regulations after being unable to distribute religious literature at Mt. Rushmore National Monument. The plaintiff argued that all national parks are traditional public forums, citing the Supreme Court's recognition as such. *Id*. at 514. While the court acknowledged the argument's premise, it explained that the First Amendment's protections do not depend on "what the forum is *called*, but what *purpose* it serves, either by tradition or specific designation." *Id*. at 515. The court clarified that a forum does not become a traditional public forum simply because it has grass and trees, but because it has "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." *Id*. (quoting *Perry*, 460 U.S. at 45).

Therefore, the court held that if the plaintiff hoped to establish the park as a traditional public forum, he had to show that it had been held open by the government for the purpose of public discourse. *Id*.

Traditional public forums, such as streets or parks, are continually open and essential for daily public activity, unlike temporary events that draw large crowds. *Heffron v. Int'l Soc'y for Krishna Consciousness*, Inc., 452 U.S. 640, 651 (1981). In *Heffron*, the plaintiff challenged a rule requiring a rented booth to distribute literature at the Minnesota State Fair, claiming it violated their First Amendment rights. *Id*. at 644-45. The Court noted that while the defendants likened the fairgrounds to city streets, significant differences existed. *Id*. at 651. Streets are "continually open, often uncongested, and constitute[] . . . a necessary conduit in the daily affairs of a locality's citizens." *Id*. Meanwhile, the state fair is a temporary event that draws a "great number[] of visitors" for only a short period of time. *Id*. The Court concluded that the fairgrounds were not a traditional public forum. *Id*.

Further, in *Greer v. Spock*, this Court clarified that public property does not automatically become a public forum simply because the public is allowed to access it freely. 424 U.S. 828, 836 (1976). In *Greer*, the plaintiffs requested to distribute campaign materials and hold a meeting at a U.S military base but were rejected under a regulation banning partisan political activities. *Id*. at 828. The plaintiffs filed suit on First Amendment grounds, and the appeals court ruled in their favor, reasoning that if public property is continually held open to the public to come and go at all times, it is a public forum. *Id*. at 836. Yet, this Court rejected such an interpretation, stating, "such a principle of constitutional law has never existed, and does not exist now." *Id*. As a result, this Court held that mere public access does not transform property into a public forum, overturning the lower court's interpretation. *Id*.

Conversely, some courts have recognized various state parks as traditional public forums. *See, e.g., Naturist Soc'y, Inc. v. Fillyaw*, 958 F.2d 1515, 1522 (11th Cir. 1992). In *Fillyaw*, the plaintiffs sought permission to distribute literature at a small beach state park in Florida. *Id*. at 1517. The defendant, serving as the park manager, granted the permit but imposed restrictions on their speech, prompting the plaintiffs to file suit for violation of the First Amendment. *Id*. The court focused primarily on the characteristics of the park, establishing that it was not merely a beach since it "contain[ed] parking lots, a nature center, and walkways." It further observed that at city parks, like the beach, "the public may swim, play games, rest, and enjoy the surroundings." *Id*. at 1522. Ultimately, these characteristics led the court to hold that the park was a traditional public forum. *Id*. at 1523. The Connecticut Supreme Court proffered similar reasoning in *Leydon v. Town of Greenwich*, 777 Conn. 552, 571 (2001), when it held that a park was a traditional public forum. *But see State v. Ball*, 260 Conn. 275, 298 (2002) (holding that a large undeveloped state forest was not a traditional public forum). In *Leydon*, the plaintiff, a resident of Stamford, Connecticut, was denied entry to Greenwich Point Park due to an ordinance limiting access to Greenwich residents and their guests. *Id*. at 560. The plaintiff subsequently sued Greenwich and claimed the ordinance violated the First Amendment. *Id*. In analyzing the park, the court observed that it had the characteristics of a public park, such as "a parking lot . . . nature preserve, shelters, walkways and trails, and picnic areas with picnic tables." *Id*. at 570. These characteristics proved sufficient for the court to conclude that the park was a traditional public forum. *Id*. at 571.

In the case at hand, Red Rock is not a traditional public forum. First, Red Rock significantly differs from typical traditional public fora, such as streets or city parks. Such a distinction was made in *Heffron*, where this Court contrasted the Minnesota State fairgrounds with traditional public fora, establishing that streets are "continually open, often uncongested, and constitute[] . . .

a necessary conduit in the daily affairs of a locality's citizens." 452 U.S. at 651. Meanwhile, the fairgrounds, as this Court explained, were merely temporary events that drew a "great number[] of visitors" for only a short period of time. *Id*. Similarly, Red Rock has never functioned as an essential means by which the Delmont citizens conduct their daily affairs. Moreover, like the Minnesota State fairgrounds, Red Rock is a remote area within a park, R. at 2, that is visited by large numbers of people for only a short period of time – just four days a year, R. at 5. In fact, historical records reveal that the observance has, at times, not taken place at all. R. at 4. Indeed, as the district court observed, Red Rock is unlike the temporary fairgrounds in *Heffron* because it is "continually open" for public use throughout the year. R. at 16. But, as this Court clarified in *Greer*, the mere fact that property is continually open to the public does not transform it into a public forum. 424 U.S. at 836. Simply put, "such a principle of constitutional law has never existed and does not exist now." *Id*.

Petitioner highlights that many courts have recognized state parks as traditional public fora. R. at 39. However, such precedent does not necessitate the conclusion that Red Rock is a public forum simply because it is part of Painted Bluffs State Park. The First Amendment's protections hinge not on "what the forum is *called*, but what *purpose* it serves, either by tradition or specific designation." *Boardley,* 615 F.3d 515. Nor does a forum become a traditional public forum because it has some characteristics of a park. *Id*. Rather, it must be demonstrated that it has "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." *Id*. (quoting *Perry*, 460 U.S. at 45). The record demonstrates that Red Rock falls far short of such criteria. Yes, "[a]ccording to Montdel oral histories," Petitioner's religious practices have been "uninterrupted" at Red Rock. R. at 3. But that was "since before recorded history." *Id*. More

recently, the record points to significant interruptions in the nineteenth and twentieth centuries, as Petitioner experienced displacement, population decline, and cultural fragmentation. R. at 3-4. These practices were often skipped during times of "economic hardship," further underscoring that Red Rock has not functioned as a venue for continuous public use or discourse. R. at 4.

Second, Red Rock starkly contrasts with the parks that courts *have* recognized as traditional public fora. For instance, in *Fillyaw*, the Eleventh Circuit held that a small beach state park was a traditional public forum after it observed it "contain[ed] parking lots, a nature center, and walkways." 958 F.2d at 1522. Likewise, the forum in *Leydon* was a city park in a densely populated area, featuring amenities such as "a parking lot . . . nature preserve, shelters, walkways, trails, and picnic areas with picnic tables." 777 Conn. At 570. Red Rock, meanwhile, is a vast, remote wilderness devoid of these developed characteristics. R. at 2. It lacks nature centers, parking lots, walkways, or any comparable infrastructure, making it fundamentally distinguishable from the parks previously classified as traditional public fora. Perhaps this distinction may explain why the Connecticut Supreme Court, the same court that decided *Leydon*, held that a large, undeveloped state forest did not qualify as a traditional public forum. *Ball*, 260 Conn. At 285. Ultimately, the profound differences between Red Rock and the highly accessible and developed forums that are traditionally afforded First Amendment protections reveal why Red Rock cannot be categorized as a traditional public forum.

2. *Red Rock is not a designated public forum because there is insufficient evidence of governmental intent to open it for public discourse.*

Like a traditional public forum, a designated public forum is open to the "indiscriminate use" by the general public, *Perry*, 460 U.S. at 47, however, "the government may close a designated public forum whenever it chooses." *Seattle Mideast Awareness Campaign v. King Cnty*., 781 F.3d 489, 496 (9th Cir. 2015). Ultimately, the creation of a designated public forum is a

result of "purposeful government action." *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677 (1998).

A forum becomes a designated public forum only when the government intentionally opens it for public discourse, not through government inaction or limited allowance of speech. *Cornelius*, 473 U.S. at 802. In *Cornelius*, the federal government created the Combined Federal Campaign (CFC) for federal employees to donate to charities, while restricting participation to charities providing direct health and welfare services. *Id*. at 790-91. The NAACP challenged this policy as a First Amendment violation. *Id*. at 795. In analyzing the CFC forum, the Court clarified that "[t]he 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." *Id*. at 802 (emphasis added). To determine the government's intent, the Court examined the "nature of the property and its compatibility with expressive activity" as well as the policy and practice of the government. *Id*. In doing so, the Court observed that the CFC consistently limited participation to only "appropriate" agencies and that the federal workplace's nature justified restrictions to avoid disruption. *Id*. at 804. Thus, the Court held that the CFC was not a designated public forum. *Id*. at 813.

In this case, Red Rock is not a designated public forum because the Government did not intentionally open Red Rock as a forum for public discourse. In *Cornelius*, this Court established that "[t]he 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." 473 U.S. at 802 (emphasis added). To ascertain the government's intent, this Court examined the "nature of the property and its compatibility with expressive activity" as well as the policy and practice of the government. *Id*. Here, the record unequivocally states: "Painted Bluffs State Park was acquired by the State of Delmont . . . with the *intent* to preserve its natural beauty." R. at 4 (emphasis added).

This purpose aligns with the State's stewardship role but does not indicate an intent to foster public discourse. But, even in applying the factors in *Cornelius*, Red Rock is inherently incompatible with expressive activity because of its "challenging geography." R. at 4. Additionally, in looking at the State's policies and practice, it has never "impeded [Petitioner's] religious observances nor restricted access to Red Rock or the Painted Bluffs areas." *Id*. Petitioner has maintained their religious practices at Red Rock independent of any State initiative to encourage or support public expression.

Petitioner argues that the Government endorsed their use of the property as a place for expressive activity by referencing their religious practices in promoting the park and issuing various vendors' licenses. R. at 37. However, the Government's "inaction" or "[allowance] of limited discourse," does not demonstrate intent to open the property for public discourse. *Cornelius*, 473 U.S. at 802. Red Rock is a nonpublic forum because it does not share the historical, functional, or physical characteristics of traditional public fora and the Government did not demonstrate any intent to open it for public discourse as a designated public forum. The incidental and limited use of Red Rock for religious observances does not transform it into a public forum.

B. The Government's Restriction of Speech Satisfies the Standard of Review For a Nonpublic Forum Because It Is Reasonable And There Is No Evidence In The Record That Its Restriction Is Based On a Disagreement With The Content or Viewpoint of Petitioner's Speech.

When evaluating restrictions on expressive activity in nonpublic forums, this Court applies a unique standard of review because the government, akin to a private property owner, holds the "power to preserve the property under its control for the use in which it is lawfully dedicated." *Adderley v. Florida*, 385 U.S. 39, 47 (1966). Red Rock is controlled by the Government and is a nonpublic forum. Under a nonpublic forum, the government's restrictions are permissible as long as they are reasonable and viewpoint neutral. *See Perry*, 460 U.S. at 46. The government's decision

to restrict expressive activity is not required to "be the most reasonable or the only reasonable limitation." *Cornelius*, 473 U.S. at 808. Rather, the reasonableness of the restrictions are ultimately "assessed in the light of the purpose of the forum and all the surrounding circumstances." *Id*. at 809.

This Court has held that the government may impose restrictions in a nonpublic forum in the absence of evidence that the action was based on a disagreement with the content or viewpoint of the speech. *See Adderley*, 385 U.S. at 47; *but see Members of City Council of City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 822 (1984) (Brennan, J., dissenting) (explaining that a regulation limiting access to a nonpublic forum based on the existence of reasonable grounds for doing so will not stand if it is a façade for viewpoint-based discrimination). In *Adderley*, the plaintiffs, who were thirty-two college students, went to a jail to protest their classmates' imprisonment and general state policies favoring racial segregation. *Id*. at 41. The group was arrested by the county sheriff for trespassing on jail grounds and the plaintiff challenged their arrests as a violation of the First Amendment. *Id*. at 40-41. The Court emphasized that there was "not a shred of evidence in [the] record" that the sheriff exercised his power because he disagreed with the objectives of the protest. *Id*. at 47. Instead, the record simply revealed that he only objected to their *presence* on the jail grounds and that he was within his authority to direct the plaintiffs off the grounds. *Id*. at 46-47. As a result, the Court held that the plaintiffs had no merit to argue their First Amendment rights were violated when they were arrested for staying on the property. *Id*.

The restriction on the expressive activity occurring at Red Rock is both reasonable and viewpoint neutral, thereby satisfying the requisite standard of review for a nonpublic forum. First, there is ample evidence supporting the reasonableness of the sale of Red Rock. The State of Delmont's mining industry is a "significant portion" of its economy, R. at 6, which in turn will

generate employment opportunities, R. at 48, and fuel economic growth. In line with this, the State has implemented an initiative under the ECIA, which aims to expand the extraction of critical minerals such as lithium, nickel, copper, and iron. R. at 6. This initiative not only supports the State's efforts to reduce fossil fuel dependance, but also aligns with federal mandates promoting sustainable energy development. R. at 6-7.

The district court's dismissal of the interest in reducing fossil fuel dependence as "too remote and speculative," R. at 23, misunderstands the role of lithium in advancing renewable energy initiatives. While it is true that climate change is a global issue, progress toward mitigating its effect requires cumulative contributions from specific, localized locations. The lithium deposits at Red Rock are not ordinary or marginal – they are the largest ever discovered in North America. R. at 7.

Second, the sale of Red Rock was viewpoint neutral. As was the case in *Adderley*, there is "not a shred of evidence in [the] record," 385 U.S. at 47, that the ECIA and transfer of Red Rock was motivated by a disagreement with the content of the speech of those keeping the Montdel Observance. Nevertheless, Petitioner contends that the State "harbored an implied motive" to suppress their speech. R. at 41. In support of this claim, Petitioner cites the affidavit of Alex Greenfield, Secretary of the DNRA for the State of Delmont, *id*., which states that the Governor of Delmont described the festival "as a nuisance and express[ed] his frustration with the ongoing cleanup after festival activities," R. at 47. Yet, such a claim is not proof of the Governor objecting to the *viewpoint* expressed at the Montdel Observance. Greenfield's affidavit appears to merely show the Governor's frustration with logistical concerns, such as the burden of cleaning up after festivals. And at most, it may reveal an objection to Petitioner's presence at Red Rock. But as in *Adderley*, where the sheriff objected only to the protestor's *presence* and not their message, the

Court upheld his authority to do so and found no First Amendment violation. 385 U.S. at 46-47. Likewise, even if the Governor objected to Petitioner's presence at Red Rock – which remains entirely speculative – the State has the right to regulate access to its property, so long as such regulation is not based on its viewpoint. There is no evidence in the record that this regulation was motivated by a disagreement with Petitioner's viewpoint.[1]

CONCLUSION

For these reasons, the United States of America asks this Court to AFFIRM the United States Court of Appeals for the Fifteenth Circuit's decision.

Dated: January 31, 2025

Respectfully Submitted,

/s/ *Team 018*

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[1] When the government does not merely close a traditional public forum, but instead closes a traditional public forum by *sale or transformation*, as is the case here, Justice Kennedy's concurrence in *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 699 (1992), provides valuable guidance: "[i]n some sense, the government always retains authority to close a public forum, by selling the property, changing its physical character, or changing its principle use. Otherwise the State would be prohibited from closing a park, or eliminating a street or sidewalk, which no one has understood the public forum doctrine to require. The difference is that when property is a protected public forum the State may not by fiat assert broad control over speech or expressive activities; it must alter the objective physical character or uses of the property, and bear the attendant costs, to change the property's forums status." In this case, the Government is not merely eliminating speech but fundamentally changing the property's use from a park to a mining area. When a forum's physical character is transformed, the government need only show that the action is reasonable and viewpoint neutral. *See Satanic Temple* v. *City of Belle Plaine*, 80 F.4th 864, 868 (8th Cir. 2023). The sale of Red Rock is reasonable and not motivated by viewpoint discrimination, and therefore withstands the standard of review under the sale or transformation of a traditional public forum as well.

BRIEF CERTIFICATE

We, the members of Team 018, certify that the work product contained in all copies of our brief is the sole and independent work of our team members.

We affirm that our team has fully complied with the governing honor code for Team 018.

We acknowledge that we have adhered to all Competition Rules in the preparation and submission of this brief.