No. 24-CV-1982

In the

Supreme Court of the United States

March Term 2025

MONTDEL UNITED

Petitioner,

v.

STATE OF DELMONT and
DELMONT NATURAL RESOURCES AGENCY

Respondent.

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

BRIEF FOR THE PETITIONER

TEAM 21

Counsel for the Petitioner

January 31, 2025

QUESTIONS PRESENTED

I. Whether the State of Delmont and Delmont Natural Resources Agency ("DNRA") violated the Free Exercise Clause when they entered into a land transfer agreement that denies the Montdel people access to their most sacred religious site.

II. Whether the State of Delmont and DNRA violated the Free Speech Clause when they entered into a land transfer agreement that prohibits the Montdel people from engaging in a religious ritual they have done for centuries.

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The opinion of the United States District Court for the District of Delmont, Western Division, is reported at *Montdel United v. Delmont*, No. 24-cv-1982 (D. Delmont 2024). R. at 1–32. The opinion of the United States Court of Appeals for the Fifteenth Circuit is reported at *Montdel United v. Delmont*, No. 24-cv-1982 (15th Cir. 2024). R. at 33–45.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over the present constitutional questions on appeal under 28 U.S.C. § 1253.

STATEMENT OF THE CASE

I. Statement of Facts

The Montdel people are an Indigenous Native American group who conduct their religious practices at Red Rock, located in Painted Bluffs State Park ("Painted Bluffs"), beginning in 400 A.D. R. at 2. Red Rock is essential to the Montdel people's religious practices and cultural identity. R. at 2–3. The Montdel people hold the unwavering belief that the only way that they can access their creator is through their centuries-old ceremonial practices at Red Rock. R. at 3. The Montdel religion requires their elders to carry out these ceremonies during the fall and spring equinoxes at Red Rock. R. at 3. If the Montdel people do not carry out these ceremonies at Red Rock specifically, their religion teaches that they will "incur the creator's wrath." R. at 3.

The Montdel people continued their ceremonial practices at Red Rock for centuries with few deviations in recorded history. R. at 4. Until recently, Delmont did not impede or restrict the Montdel peoples' religious practices in Painted Bluffs. R. at 4.

James and Martha Highcliffe, a married couple with Montdel heritage, sought to memorialize the Montdel religious practices by creating the initiative known as the "Montdel Observance." R. at 5. Through the Montdel Observance, the Highcliffes aimed to recruit Montdel people who had assimilated into other tribes, as well as those from outside of the native community, who had an interest in Montdel history and culture. R. at 5. The Highcliffes guided those recruited on a formal pilgrimage to Red Rock during the fall and spring equinoxes for religious observance. R. at 5. Since 1952, these participants became known as the "Old Observers," who continue to gather four times a year. R at 5.

The Montdel Observance became a formal ritual intended to strengthen the religious and cultural traditions of the Montdel people at Red Rock. R. at 5. This practice honors the tradition of the tribal elders climbing Red Rock to conduct crop sacrifices and prayers to the Creator during the twenty-four-hour equinox period. R. at 5. As the elders ascend Red Rock, other participants perform praise rituals and meditate at its base. R. at 5. As the ritual continued, non-Montdel individuals began to attend associated festivals near Red Rock. R. at 5. However, the Old Observers never participated in the more festival-like event along the Delmont River. R. at 5.

In 2022, the Delmont legislature enacted the Energy and Conservation Independence Act ("ECIA") to promote lithium, nickel, iron, and copper mining in line with federal conservation goals. R. at 6–7. The ECIA authorized Delmont to transfer land to private mining corporations to extract these minerals from public lands. R. at 6. The ECIA granted the Delmont Natural Resources Agency ("DNRA") the authority to manage the land transfer agreements between the state of Delmont and private mining authorities. R. at 6. When entering into a land transfer agreement, the ECIA requires an independent third party to appraise the land for environmental

and economic impacts. R. at 6. The DNRA then has sixty days to consider these impacts before they decide to proceed with the agreement. R. at 6.

Painted Bluffs, the Montdel people's sacred land, contains pegmatite deposits composed of lithium, among other minerals. R. at 6. The pegmatite deposits are concentrated in the Red Rock area within Painted Bluffs. R. at 7. Since the discovery of the deposits in Painted Bluffs twenty years ago, Delmont proposed legislation several times to grant private corporations their mining rights, but each attempt failed. R. at 7. However, in January 2023, the DNRA successfully agreed to transfer one-fourth of Painted Bluffs to Delmont Mining Company ("DMC"). R. at 7. The land transfer specifically included Red Rock. R. at 7.

The DMC-proposed mining operations will completely destroy the Montdel people's sacred site. R. at 8. The mining process will clear the land's surface and scrape all earth away. R. at 8. After leveling the earth above the deposit, the miners will blast the rock, leading to shearing and erosion. R. at 8. Consequently, the land transfer will bar the Montdel people from visiting the Red Rock sacred site for safety concerns. R. at 8. According to the DNRA's environmental impact study, "reclamation of [the Red Rock] area by any practical means [will] be unfeasible," and alternative mining technologies would lead to the same result. R. at 8–9.

The DNRA previously withdrew from other ECIA-authorized land transfer agreements for concerns similar to those at issue here. R. at 9. The DNRA terminated an agreement with Granite International, Inc. because it would impact local fauna, despite the area having "rich" nickel deposits. R. at 9. Additionally, the DNRA rejected a land transfer to McBride Brine Mining because their mining practices would contaminate the water supply. R. at 10.

The land transfer will force the Montdel people to relocate their religious ritual more than five miles away from Red Rock, completely disconnecting them from the site that has been

integral to their religious practices for centuries. R. at 8. After the land transfer, the Red Rock area will be privately owned by DMC and inaccessible to all visitors. R. at 9. The key reasons listed by the DNRA for the land transfer are: (1) reducing fossil fuel use; (2) the impracticability of waiting for alternative mining technologies to emerge; and (3) economic benefits. R. at 8. None of the DNRA's reasons mention the Montdel's centuries-old ritual taking place solely at the center of the proposed mining site. R. at 8.

In response to Delmont's attempts to sell the mining rights of the Montdel people's sacred land, the Highcliffes established Montdel United. R. at 7. Montdel United is a non-profit organization comprised of Montdel descendants. R. at 7. Montdel United intends to preserve the Montdel religious sites and practices by raising public awareness and protesting against the proposed land transfer that would destroy the Montdel people's holy site. R. at 7.

II. Procedural History

After the DNRA's final decision to destroy the Montdels' sacred land, Montdel United filed for a temporary restraining order and injunctive relief in the U.S. District Court for the District of Delmont against the State of Delmont and the DNRA (collectively, "Respondents"). R. at 10. The District Court denied Montdel United's request for a restraining order but granted a preliminary injunction against the land transfer. R. at 10. The District Court held that Montdel United was likely to succeed on the merits of its free speech and free exercise claims. R. at 10. The State of Delmont and DNRA appealed the decision to the U.S. Court of Appeals for the Fifteenth Circuit. R. at 33.

The Fifteenth Circuit disagreed with the District Court that Montdel United's free speech and free exercise claims were likely to succeed on the merits and reversed, denying Montdel United's request for a preliminary injunction. R. at 33. Following the Fifteenth Circuit's reversal,

Montdel United petitioned for this Court to grant certiorari on the First Amendment issues of Montdel United's free exercise and free speech rights, respectively. R. at 54. This Court granted certiorari on both issues. R. at 55.

SUMMARY OF THE ARGUMENT

Respondents' agreement to the land transfer violates the Montdel people's First Amendment rights. First, the land transfer agreement infringes on the Free Exercise Clause. Laws that burden free exercise that are not neutral or of general applicability must pass strict scrutiny. The land transfer agreement is not generally applicable because it prohibits the Montdel people from practicing their religion, while allowing secular exceptions in similar situations. Moreover, the land transfer does not pass strict scrutiny because the government does not have a compelling interest in prohibiting the Montdel people's religious practice, and even so, that interest is not narrowly tailored because the land transfer is overbroad. Because the land transfer is not neutral or generally applicable and does not pass strict scrutiny, it violates the Free Exercise Clause.

Second, the land transfer agreement violates the Free Speech Clause. The land transfer agreement will destroy Red Rock, a place that has been sacred to the Montdel people's religious expression for centuries. Because Red Rock is a traditional public forum, the government may not close it to expressive activity. Even if this Court holds that Red Rock is a designated public forum, the land transfer remains unconstitutional because it does not pass intermediate scrutiny as a restriction on the time, place, and manner of speech. The Court of Appeals erred in denying Montdel United's request for a preliminary injunction. Montdel United respectfully respects that that decision be reversed and that the preliminary injunction be granted.

ARGUMENT

STANDARD OF REVIEW

This Court reviews an appeal from a preliminary injunction *de novo*. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 867 (2005). Under the *de novo* standard, the appellate court affords "no deference" to the decision of the lower court. *Gattineri v. Town of Lynnfield*, 58 F.4th 512, 514 n.2 (1st Cir. 2023). Specifically, reviewing First Amendment questions requires an "examination of the whole record" to ensure that the lower court's judgment did not constitute a "forbidden intrusion" on constitutional rights. *Bose Corp. v. Consumers Union*, 466 U.S. 485, 499 (1984) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 284–86 (1964)).

I. The Court of Appeals erred in deciding that the land transfer does not violate the Free Exercise Clause because the agreement is not neutral and generally applicable and does not pass strict scrutiny.

The First Amendment prohibits "*any* restraint on the free exercise of religion." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222–23 (1963) (emphasis added); *see* U.S. Const. amend. I. The First Amendment applies to the states through incorporation by the Fourteenth Amendment. *See* U.S. Const. amend. XIV. Accordingly, Respondents' transfer of Painted Bluffs violates the Free Exercise Clause of the First Amendment if it restrains the Montdel people's religious practices in any way. *See Schempp*, 375 U.S. at 222–23.

The transfer of Painted Bluffs violates the Montdel people's right to free exercise. First, the land transfer agreement is not neutral or generally applicable because the DNRA withdrew from land transfer agreements for secular reasons in similar situations. Second, withdrawal from the agreement would not be a grave abuse of Delmont's power, and the restrictions imposed by the agreement could be drafted to allow Montdel people to continue visiting the Red Rock area. Accordingly, the land transfer agreement does not pass strict scrutiny and violates free exercise.

A. The Free Exercise Clause is violated by the Painted Bluffs land transfer because the DNRA's use of its discretion to transfer the land is not neutral or generally applicable.

The Free Exercise Clause protects individuals from being coerced by the government into violating their religious beliefs. *See Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988). If a law implicates the right to free exercise of religion and is not neutral or generally applicable, the law must pass strict scrutiny. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 531–32, 546 (1993); *see Employment Div. v. Smith*, 494 U.S. 872, 879 (1990).

The Free Exercise Clause protects individuals from any government action that will coerce them to violate their religious beliefs. For example, the appellee in *Bowen v. Roy* asserted that any use of his daughter's social security number would "harm his daughter's spirit" under his religion and would violate free exercise as a result. See 476 U.S. 693, 699 (1986). This Court disagreed with the appellee's contention, holding that free exercise does not allow an individual to determine the government's internal procedures. *See id.* at 700. *Bowen* set the precedent that individuals cannot control how the government conducts its internal affairs in the name of free exercise.

The Free Exercise Clause safeguards individuals' right to visit sites sacred to their religious tradition. In *Lyng*, this Court relied on *Bowen* to determine that building a road in a portion of a national forest historically used for religious purposes did not violate free exercise. *See* 485 U.S. at 441–42, 448. This Court emphasized that the logging would not destroy any of the specific spiritual sites. *See id.* at 454. In fact, the government took affirmative steps to ensure that it built the road as far away from Native religious sites as possible. *See id.* This Court was careful not to apply *Lyng*'s holding to cases where Native people would be barred from visiting a spiritual site. *Id.* at 453 ("[A] law forbidding the Indian respondents from visiting the Chimney Rock area would raise a different set of constitutional questions."); *see also Wilson v. Block*, 708

F.2d 735, 744 (D.C. Cir. 1983) (concluding that a development that would flood a Native sacred site did not unconstitutionally burden the Native people's free exercise right because they retained access to the sacred site). Therefore, *Lyng* does not extend to situations where the government prohibits individuals from visiting sacred sites tied to their religion.

The Ninth Circuit misinterpreted *Lyng*'s scope and significance in *Apache Stronghold v. United States* by disregarding this Court's intended scope for the word "prohibit." *See* 95 F.4th 608 (9th Cir. 2024) (en banc) (per curiam). The Apache people continuously performed religious rituals at Oak Flat, an area located in Tonto National Forest, for at least a millennium. *Id.* at 614–15. Oak Flat was "indispensable" to the Apache's religious rituals, and those rituals could not occur anywhere else. *Id.* However, because Oak Flat was located on a large copper ore deposit, the state government agreed to transfer Oak Flat and the surrounding land to a private mining company. *Id.* at 616. The public would be permanently barred from visiting the Oak Flat area as a result of the land transfer. *Id.* at 617. The majority relied on *Lyng* to assert that the land transfer would merely frustrate, not prohibit, free exercise under the First Amendment. *Id.* at 620.

The majority in *Apache Stronghold* erroneously relied on *Lyng* to conclude that the government action did not coerce the Apache people into acting contrary to their religion. *Id* at 622 (quoting *Lyng*, 485 U.S. at 449–50). While the transfer in *Lyng* did not involve the destruction of any spiritual sites, nor was the public prevented from visiting them, the majority declined to distinguish the Apache people's case on these facts. *Id.* at 622–23. The majority reasoned that the mining operation pertained to the government's management of its own land, which was an internal matter not protected by the Free Exercise Clause. *Id.* ("[I]t is not enough under *Lyng* to show that the Government's management of its own land and internal affairs will have the practical consequence of 'preventing' a religious exercise."). The Ninth Circuit majority

made the sweeping assertion that holding otherwise would mean any transfer of government land without a condition to ensure continued public access would constitute a free exercise violation. *Id.* at 625. However, the Ninth Circuit's interpretation defies this Court's explicit intention that *Lyng* should not extend to situations where individuals are prohibited from visiting spiritual sites.

Laws implicating free exercise that are not neutral and generally applicable must survive strict scrutiny. Neutrality and general applicability are interrelated requirements; if one is not satisfied, the other cannot be. *See Church of Lukumi*, 508 U.S. at 531. In *Smith*, the state of Oregon prohibited the possession of controlled substances, including peyote. 494 U.S. at 874. Even though the Respondents in *Smith* possessed peyote for sacramental purposes, they were denied government benefits due to Oregon's law on controlled substances. *Id.* This Court held that Oregon's law was generally applicable, thus not implicating free exercise rights, because the disproportionate effect on the Respondents' religion was a mere incidental effect of the law, rather than its purpose. *Id.* at 878–79 (holding that "valid and neutral laws of general applicability" do not violate the First Amendment, even when they adversely proscribe or prescribe religious conduct).

When a law treats a secular activity more favorably than religious activity, it cannot be neutral and generally applicable. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021). In *Church of Lukumi*, a city ordinance proscribed animal sacrifice for any type of ritual, but made exceptions for secular purposes, such as animals specifically raised for food. *See* 508 U.S. at 527–28. This Court concluded that the city ordinance was not neutral or generally applicable because it deemed killing for religious reasons "unnecessary," while most other purposes fell outside of the ordinance. *See id.* at 537–38. Likewise, the First Circuit analyzed a state-created historical commission charged with designating historic districts in *Roman Catholic Bishop v. City of*

Springfield. *See* 724 F.3d 78, 85 (1st Cir. 2013). The historical commission created a single-parcel historic district, encompassing only a church, that enjoined the Bishop from making any changes to the church's exterior. *Id.* at 83. The ordinance was not a neutral law of general applicability because the discretion of the Springfield Historical Commission allowed them to restrain property owners in limited areas. *See id.* at 98 ("One of the dangers of a discretionary system such as this one is the prospect that the government's discretion will be misused."). Therefore, a discretionary law that inhibits religious activity while making similar secular exceptions suggests that the law is not neutral or generally applicable.

The DNRA's land transfer agreement unlawfully coerces the Montdel people into violating their religious beliefs. Unlike the case in *Bowen*, the Montdel people are not attempting to control how the government internally handles their information—they are requesting that the government not take affirmative action to destroy their sacred place of worship. *See* R. at 10; 476 U.S. at 699–700. Similarly, this case can be distinguished from *Lyng* because the DNRA's land transfer will destroy the sacred site and prohibit the Montdel people from visiting. R. at 8–9. In contrast, the government action in *Lyng* merely affected the area surrounding the sacred site and its "privacy, silence, and undisturbed natural setting." *See* 485 U.S. at 442. Furthermore, this Court explicitly stated that *Lyng*'s holding did not extend to laws that "forbid[]" Native people from visiting sacred sites. *See* R. at 9 ("Following the transfer, [Red Rock] will be accessible only to DMC and its employees."); 485 U.S. at 453. *Lyng* follows precedents, such as *Wilson*, which recognize that government action does not implicate free exercise when access to sacred sites continues. *See, e.g.*, 708 F.2d at 744; *see also* 485 U.S. at 455. However, that is not the case here, where all Montdel people will lose access to Red Rock because of the Respondents' land transfer. *See, e.g.*, 708 F.2d at 744; *see* R. at 9; 485 U.S. at 454–55. Accordingly, because the

DNRA's land transfer will completely deprive the Montdel people of access to Red Rock, the land transfer implicates free exercise rights.

This Court should not apply the Ninth Circuit's incorrect interpretation of *Lyng* to this case. The majority in *Apache Stronghold* ignores the fact that the government action in *Lyng* would leave the sacred site at issue "undisturbed." *See* 95 F.4th at 718 (Murguia, C.J., dissenting) (quoting *Lyng*, 485 U.S. at 454). In contrast, the government action here and in *Apache Stronghold* would destroy and deny access to sacred sites. *See* R. at 9. Applying *Lyng* in this manner would go against this Court's explicit unwillingness to extend its holding to cases where the government action prohibits Native people from visiting their sacred site. *See Apache Stronghold*, 95 F.4th at 720 (Murguia, C.J., dissenting) (quoting *Lyng*, 485 U.S. at 453) ("[T]he Land Transfer Act is *exactly* that kind of 'prohibitory' law."); *see also Lyng*, 485 U.S. at 453 ("The Constitution does not permit government to discriminate against religions that treat particular sites as sacred."). The DNRA's land transfer will not merely "frustrate" the Montdel people's ability to perform their religious rituals—the Montdel will be completely prohibited from doing so once Respondents bar their access to Red Rock. *See* R. at 9; *see also Apache Stronghold*, 95 F.4th at 720 (Murguia, C.J., dissenting). Therefore, adopting the Ninth Circuit's interpretation of free exercise here would be a misapplication of the Constitution and this Court's own precedents.

The DNRA's land transfer agreement is not a valid and neutral law of general applicability. Respondents may argue that the land transfer is akin to the controlled substances law in *Smith* because nothing in the EICA or land transfer suggests that the agreement targets the Montdel people. *See* R. at 7–8; 494 U.S. at 879. However, the discretion of the DNRA to enter into land transfer agreements more closely resembles the historical commission in *Roman*

Catholic Bishop. *See* R. at 6–7; 724 F.3d at 85. Like the historical commission in *Roman Catholic Bishop*, the DNRA has unfettered discretion to consider independent economic and geological studies and decide to transfer public lands. *See* R. at 6, 8; 724 F.3d at 99. The DNRA abused their discretion under the EICA because it withdrew from two other similar land transfer agreements for secular environmental impact reasons, like the city ordinance in *Church of Lukumi*. *See* R. at 9–10; 508 U.S. at 524 (concluding that the city ordinance was unlawful because the secular ends of the law were only applied to conduct motivated by religious beliefs). The DNRA's willingness to withdraw from agreements based on the impact on local flora and fauna, contrasted with their flippancy towards the impact on the Montdel people's longstanding religious rituals specifically tied to the area, proves that the DNRA's actions are neither neutral nor generally applicable. *See* R. at 8-10; *see also Church of Lukumi*, 508 U.S at 537; *Roman Catholic Bishop*, 724 F.4th at 98-99. Because the DNRA's land transfer is not neutral and generally applicable, strict scrutiny applies to the agreement.

B. The land transfer agreement does not pass strict scrutiny because Delmont does not have a compelling interest in prohibiting the Montdel people from visiting Red Rock and could be less restrictive in its ban on non-DMC employees.

If a law burdening free exercise is not neutral or generally applicable, the law can only be constitutional in the "rare" case that it survives strict scrutiny. *Church of Lukumi*, 508 U.S. at 546; *see Smith*, 494 U.S. at 878. Furthermore, a law will only pass strict scrutiny if it furthers government interests "of the highest order" and is "narrowly tailored in pursuit of those interests." *Church of Lukumi*, 508 U.S. at 546 (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 (1978)). The government alone bears the burden of demonstrating that the law satisfies strict scrutiny. *Tandon*, 593 U.S. at 62.

First, for a law to pass strict scrutiny, the government must show that the law advances a compelling government interest. This Court defines a compelling interest as an "interest 'of the highest order.'" *Church of Lukumi*, 508 U.S. at 546 (quoting *Fla. Star v. B.J.F.*, 491 U.S. 524, 541–42 (1989)). A compelling interest requires the government to demonstrate that it would "commit one of 'the gravest abuses'" if it did not take the action at issue. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 696 (2020) (Alito, J., concurring) (defining "grave[] abuse[]" as an action that "endanger[s] paramount interest"). In *Fulton v. City of Philadelphia*, this Court found that the government did not have a compelling interest in passing an ordinance requiring a Christian adoption agency to certify same-sex couples as foster parents. *See* 593 U.S. 522, 541–42 (2021). To come to this conclusion, this Court's inquiry was whether the city had an interest in denying an exemption to the adoption agency, not whether the city had a compelling interest in enforcing the ordinance. *Id.* at 541. Accordingly, strict scrutiny requires the government to have a compelling interest in its denial of free exercise rights.

Second, even if the government has a compelling interest, the law at issue must be narrowly tailored to further the interest. In *Church of Lukumi*, the government ordinance against animal sacrifice was not narrowly tailored to accomplish its stated interests. *See* 508 U.S. at 537. This Court found that an ordinance on animal treatment and care would be narrower than a ban on the possession of animals for the purpose of sacrifice. *See id.* at 538–539. Moreover, the strict scrutiny analysis in *Roman Catholic Diocese v. Cuomo* related to the narrow tailoring of COVID-19 restrictions in New York. *See* 592 U.S. 14, 18 (2020). In its analysis, this Court emphasized that New York's COVID restrictions were the most restrictive to come before the Court and the potential for rules that were less restrictive but would also minimize the risk of

attending religious services. *See id.* at 18–19. Consequently, this Court found that New York's COVID restrictions were not narrowly tailored. *Id.* at 18. Thus, any potential for less restriction on religious practices indicates that the law at issue is not narrowly tailored.

The DNRA's land transfer does not serve a compelling government interest. Even if limiting fossil fuel emissions and seeking sustainable energy for defense contracts are government interests that are "of the highest order," the government does not have an interest specifically in denying the Montdel people access to Red Rock. *See* R. at 8, 30; *Church of Lukumi*, 508 U.S. at 546. Like the case in *Little Sisters of the Poor*, the Delmont government would not commit a "grave abuse[]" if it withdrew from the land transfer agreement. *See* 591 U.S. at 698 (Alito, J., concurring). While there are significant mineral deposits under Red Rock and in Painted Bluffs, the DNRA pulled out of a previous land transfer agreements merely because of disruption to local fauna. R. at 9–10. Delmont's previous withdrawals demonstrate that it does not consider the termination of a land transfer to be a grave abuse, even when the land at issue has significant mineral deposits. *See id.*; *Little Sisters of the Poor*, 591 U.S. at 698 (Alito, J., concurring).

Furthermore, Respondents do not have a compelling interest in denying the Montdel people access to Red Rock. Even if Delmont argues that there is a safety interest in preventing the people from entering the Red Rock area after the mining operation begins, DMC employees will be guaranteed entry, which shows that the land will be safe to visit if certain precautions are taken. R. at 9; *see Fulton*, 593 U.S. at 541 (requiring that the government have an interest in denying an exception for religious exercise). Because Delmont does not have a compelling interest in preventing the Montdel people from visiting Red Rock, the DNRA's land transfer agreement does not serve a compelling interest.

Finally, the DNRA's agreement with DMC is not narrowly tailored. Similar to how the ordinance in *Church of Lukumi* prohibited religious, but not secular, activity the land transfer will permit mining activity, while prohibiting religious activities at Red Rock. *See* R. at 8–9; 508 U.S. at 538–539. Here, the government could make the restriction narrower, while furthering its alleged interest of safety by allowing Montdel people to enter the Red Rock area if they take the same safety precautions as DMC employees, for example. *See* R. at 8–9; *see also Cuomo*, 592 U.S. at 18 (listing potential COVID ordinances that could be less restrictive on religious practices). Like the COVID restrictions in *Cuomo*, the restrictions on the Montdel people are the most restrictive ordinances of their kind to come before this Court. *See* R. at 9; 592 U.S. at 18. This Court has yet to see a case involving a land restriction so broad that it would prohibit Native people from visiting their sacred site. *See* R. at 9; 485 U.S. at 453. Further, Respondents' inquiry into alternative mining technologies demonstrates the vast environmental effects that this land transfer will have on Painted Bluffs. R. at 9. Thus, the land transfer agreement is not narrowly tailored. Because the DNRA's proposed transfer of Red Rock does not further a compelling government interest and is not narrowly tailored, Delmont's action does not pass strict scrutiny. In conclusion, the agreement between the DNRA and DMC to destroy the Montdel peoples' sacred land plainly violates the Free Exercise Clause.

II. The Court of Appeals erred in deciding that the land transfer does not violate the Free Speech clause because Red Rock is a traditional public forum, and the state's sale of Red Rock is unconstitutional as a time, place, and manner restriction.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." *Vidal v. Elster*, 602 U.S. 286, 292 (2024). The Court of Appeals erred in denying the preliminary injunction because Red Rock is a traditional public forum due to its status as a park, its long history of hosting expressive activities, and its compatibility with such activities. As such, the state cannot close it to expressive activity. However, if this Court finds

that Red Rock is a designated forum, the state still cannot proceed with the sale because it violates intermediate scrutiny as a time, place, and manner restriction.

A. Red Rock is a public forum due to its status as a park, its long history of hosting expressive activities, and its compatibility with such activities.

This Court classifies forums into three categories: traditional public fora, designated public fora, and non-public fora. Traditional public fora are places such as "streets and parks 'which have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.'" *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). Designated public fora include "public property which the State has opened for use by the public as a place for expressive activity." *Id.* The crucial difference between traditional public fora and designated public fora is that while the government has the discretion to close a designated public forum, it may not close a traditional public forum to expressive activity. *Seattle Mideast Awareness Campaign v. King Cnty.*, 781 F.3d 489, 496 (9th Cir. 2015). Finally, a non-public forum is one that does not fall into the previous two classes.

Red Rock is a traditional public forum because it is a park. Respondents do not dispute that Red Rock is contained within a portion of Painted Bluffs State Park. There is a long history of this Court holding that parks are public forums. *See, e.g.*, *United States v. Grace*, 461 U.S. 171, 177 (1983) ("[P]ublic places historically associated with the free exercise of expressive activities, such as . . . parks, are considered without more, to be public forums."); *Pleasant Grove City v. Summum,* 555 U.S. 460, 129 (2009) ("[P]ublic parks have traditionally been regarded as public fora."); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 802 (1985) ("Public streets and parks fall into this category of [traditional public forums]."); *Hague v. Comm. for*

Indus. Org., 307 U.S. 496, 512 (1939) ("[P]arks . . . have immemorially been held in trust for the use of the public.").

This long-standing precedent is dismissed by Respondents and the Court of Appeals. Respondents grasp at straws to shake off this precedent, quibbling over specific characteristics of Red Rock that are irrelevant, such as its geographic features. *See* R. at 38. As this Court has stated, once a park is identified, "a determination of the nature of the forum would follow automatically from this identification." *Frisby v. Schultz*, 487 U.S. 474, 480 (1988). A "particularized inquiry into the precise nature" of the park is not legally sound. *Id.* at 481.

The Court of Appeals goes on to not only dismiss Red Rock as a traditional public forum, but also as a designated public forum. However, their dismissal of Red Rock as the latter category of fora rests on unsound legal grounds.

First, the Court of Appeals' opinion wrongfully begins with Red Rock's characterization as a "nontraditional" forum. The lower court argues that because Red Rock is a nontraditional venue for expressive activity, the court must assess the state's intent for Red Rock's primary uses to establish whether Red Rock qualifies as a public forum. R. at 36–37. Even if this Court agrees that Red Rock's unique characteristics disqualify it as a park, it could hardly be considered "nontraditional." That characterization completely ignores not only this Court's recognition of parks, but also the fact that Red Rock has been used as an expressive forum for the Montdel people since the sixteenth century. R. at 15. Both facts place Red Rock squarely into traditional public forum territory. It is not logically reasonable to classify it as anything other than an area rich in communicative tradition, both in the law and in its practical use.

Even if this Court decides that Red Rock is a nontraditional forum warranting an intent analysis, the Court of Appeals' attempt at that analysis is incorrectly shortened. Citing *Cornelius*,

the lower court suggested that since the state opened Painted Bluffs State Park with the intention of it being a nature preserve rather than a venue for expressive activity, it cannot fulfill that latter purpose. R. at 36–37. However, this Court's holding in *Cornelius* actually suggests that considering the government's stated intent is not the end of the analysis. Courts must also examine the "nature of the property and its compatibility with express activity." *Cornelius*, 473 U.S. at 802. This Court has stated that the "crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Grayned v. City of Rockford*, 408 U.S. 104, 116, (1972).

This Court has a long history of engaging in this "compatibility assessment." In *Greer v. Spock*, the Court held that military reservations were not a public forum because allowing expressive activity would interfere with military business. 424 U.S. 828, 838 (1976). Additionally, in *Adderley v. Florida*, this Court held that jailhouse grounds were not a public forum because a group's protests interfered with normal jail uses. 385 U.S. 39, 47 (1966).

Nevertheless, a property can still be compatible with expressive activities even if it is not primarily intended for that purpose. In *ACLU v. City of Las Vegas*, the court held that while a pedestrian mall did not meet the definitions of a park or public thoroughfare (both typically recognized venues for expressive activities), it qualified as a traditional public forum because engaging in expressive activities there did not "disrupt" its main purposes as a shopping district. 333 F.3d 1092, 1101–02 (9th Cir. 2003). The fact that the government intended for it to be a shopping district and not a place of expression was irrelevant. *Id.* To only consider that intention was a threat to free speech rights. *Id.*

Expressive activity on Red Rock is compatible with the government's intentions for it. As previously discussed, the nature of Red Rock is that it is a park, and parks have long been

recognized as public forums. Second, Red Rock is fully compatible with expressive activities, as demonstrated by the Montdel people's use of it as an expressive location for centuries. Whether its primary purpose was for expressive activity does not bear on its forum classification.

Although the state initially acquired Painted Bluffs State Park to protect its natural beauty and offer the public camping, hiking, and fishing opportunities, this does not impact Red Rock's status as a traditional public forum. Similar to the pedestrian mall in *City of Las Vegas*, which had the dual purpose of a shopping district and a site of expressive activity, Painted Bluffs serves a dual purpose as a natural reserve and Montdel religious site. *See* R. at 3; 333 F.3d at 1101–02. Allowing expressive activities can coexist with the state's original intent to preserve the park for nature, and these aims have aligned since the park's opening. The two should not suddenly conflict simply because the state wishes to suddenly prioritize economic gain.

This interpretation is consistent with a plain reading of this Court's opinion in *Perry Education Ass'n*. In that case, the Court delineated that traditional public forums are those that have been "used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." 460 U.S. at 45. Note that this definition does not specify that the property's primary purpose must be for assembly and communication. *See id.* It merely states that, in some capacity, the property must be associated with them. *See id.* Every year, thousands of visitors travel to the Painted Bluffs to observe the Montdel people making supplications to their Creator. R. at 15. The Montdel people and their elders have traveled to Red Rock at designated times since before the Delmont state's formation. R. at 4. The area serves as a gathering place for not only the Montdel people, but also for tourists. R. at 7. Thus, the definition provided in *Perry* is fulfilled.

Finally, courts demonstrate a commitment to guard speakers' reasonable expectations that their speech will be protected. *City of Las Vegas*, 333 F.3d at 1100. As Justice Kennedy stated, "[t]he recognition that certain government-owned property is a public forum provides open notice to citizens that their freedoms may be exercised there without fear of a censorial government, adding tangible reinforcement to the idea that we are a free people." *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 696 (1992) (Kennedy, J., concurring). Simply put, public forums in government-owned spaces promote free speech ideals for its citizens.

In recognizing Red Rock as a traditional public forum, this Court will affirm its commitment to protecting the freedom of speech for all people. Recognizing government-owned property as a public forum protects citizens from fear of their First Amendment rights being taken away. *See id.* (Kennedy, J., concurring). The Montdel people have a profound and enduring connection to Red Rock, which the state has recognized and even promoted in their own tourism marketing campaigns. R. at 52. The connection of the Montdel people has endured for centuries and was acknowledged by the government during the park's opening ceremony. R. at 4. Abruptly removing Red Rock's public forum designation would be a devastating blow to the Montdel people and their freedom of speech guaranteed by the Constitution, which they have exercised for centuries.

B. Respondents' sale of Red Rock does not constitute a valid time, place, and manner restriction because their goals do not outweigh the anticipated negative consequences of Red Rock's destruction, and there are no ample alternative channels for the Montdel people's expressive activity.

Courts examine government restrictions on speech based on the content of the regulated speech and the type of forum in which the regulation occurs. In traditional public forums and designated public forums, there are two types of regulations: content-based and content-neutral. Content-based regulation occurs when a law is applied to "particular speech because of the topic

discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). These regulations are presumptively unconstitutional and subject to strict scrutiny. *Id.* Content-neutral restrictions occur "[i]f the government purpose in enacting the regulation is unrelated to the suppression of expression." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000). More specifically, when the government regulates expressive activity, this is known as a "time, place, and manner" restriction, which is content-neutral. *See McCullen v. Coakley*, 573 U.S. 464, 477 (2014). When examining content-neutral regulations, courts apply intermediate scrutiny.

When examining time, place, and manner restrictions, courts impose a three-prong test, assessing validity based on whether the restriction exists "without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Clark v. Cmty. for Creative Non–Violence*, 468 U.S. 288, 293, (1984).

Here, we admit that the state's actions are content-neutral. The land sale will result in Red Rock being closed to tourists, the Montdel people, and other visitors. The only people allowed will be DMC employees who are working there for the economic purposes the state put forth. The sale and subsequent restriction of expressive activity applies to all speakers.

To satisfy "narrow tailoring," a regulation "need not be the least speech-restrictive means of advancing the Government's interest." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994). Rather, the "requirement of narrow tailoring is satisfied 'so long as the . . . regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.'" *Id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)).

The sale of Red Rock is not narrowly tailored enough to serve a significant governmental interest because its environmental impacts are severely negative. Under the ECIA, all land

transfers are subject to independent environmental and economic impact studies. R. at 6. The studies independently conducted for Red Rock indicated limited success in both domains. R. at 8. DMC's mining operations would lead to the total destruction of Red Rock and its surrounding area. R. at 8. Red Rock would also become susceptible to rock shearing and erosion, rendering the entire region unsafe for visitors. R. at 8. The environmental impacts were so negative that the studies tried to explore alternative technologies, but those technologies were deemed ineffective, prohibitively costly, and challenging to implement. R. at 8–9. However, the mere exploration of these technologies indicates that the government is at least aware that these effects need to be mitigated. Additionally, since the enactment of the ECIA, the DNRA has withdrawn from multiple other agreements with negative environmental and social impacts, proving that environmental impacts carry important weight in the DNRA's decision to proceed. *See* R. at 9–10.

Furthermore, the sale of Red Rock is not narrowly tailored to serve a significant governmental interest because its suggested goals are trivial and do not outweigh the environmental destruction that would ensue. Respondents posit that the sale would assist in the state's commitment to reducing fossil fuels by enabling its production of lithium-ion batteries. R. at 9. However, it is unclear how this single project would result in a reduction of fossil fuels or the production of these batteries in a uniquely helpful way. And, as *Ward* suggests, it is possible that another project could achieve this goal just as effectively, if not more effectively, and not wage environmental destruction on Red Rock. *See* 491 U.S. at 799.

Additionally, Respondents have not proven that the broad goal of "reducing fossil fuels" qualifies as a substantial government interest. Respondents assert that this land transfer is necessary to comply with a federal mandate; however, it is unclear why this project is uniquely

essential for compliance, especially since projects with similar environmental impacts were withdrawn. *See* R. at 9. The mandate does not specifically require Red Rock to be transformed; it merely requires ion battery development. *See* R. at 9. Similarly, while respondents argue that the project could provide a significant economic boost, they have not demonstrated that economic interests could be met through alternative projects. *See* R. at 9. There are land transfers that could effectively address both goals without hindering the Montdel people's religious traditions or harming the environment.

The final piece of the intermediate scrutiny analysis asks whether "ample alternative channels for communication of the information" remain open. *Clark*, 468 U.S. at 293. "If an ordinance effectively prevents a speaker from reaching his intended audience, it fails to leave open ample alternative means of communication." *Edwards v. City of Coeur d'Alene*, 262 F.3d 856, 866 (9th Cir. 2001). As this Court has stated, an alternative mode of communication may be constitutionally inadequate if the speaker's "ability to communicate effectively is threatened." *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984).

Ample alternative channels do not exist if there are insufficient alternative means of communicating a message. In *Bay Area Peace Navy v. United States*, the Ninth Circuit held that an imposed security zone during a parade was unconstitutional because there were no ample alternative means for demonstrators to proclaim their message. 914 F.2d 1224, 1229 (9th Cir. 1990). As a result of the security zone, the demonstrators could not pass out pamphlets or otherwise engage with people at the parade. *Id.* Because they could not reach their "intended audience," the security zone was struck down. *Id.* The court held that no alternative channel was available. *See id.*

The sale of Red Rock does not provide ample alternative channels the Montdel people to effectively communicate. Similar to the security zone in *Bay Rea Peace Navy*, which prohibited demonstrators from engaging in any speech, there is no alternative site for the Montdel people to engage in their religious practices. *See id.* The Montdel believe that their Creator can only be reached at Red Rock at specific times of the year, and that tradition has remained for centuries. R. at 3. Relocating the festivals five miles down the riverbanks is thus ineffective for the Montdel people's religious exercise. *See* R. at 8. Without Red Rock, that practice is devastated. As such, intermediate scrutiny is not met. In conclusion, the land transfer agreement violates the Free Speech Clause.

CONCLUSION

The State of Delmont and the DNRA violated the First Amendment by entering into a land transfer agreement with DMC. First, they violated the Free Exercise Clause when they entered into a land transfer agreement that denies the Montdel people access to their most sacred religious site. Second, they violated the Free Speech Clause when they entered into a land transfer agreement that prohibits the Montdel people from engaging in a religious ritual they have done for centuries. Based on Delmont and the DNRA's First Amendment violations, Montdel United respectfully requests that this Court reverse the lower court's decision denying Montdel United's request for a preliminary injunction.

Respectfully submitted,

Team 21

Counsel for Petitioner

APPENDIX A

I. CONSTITUTIONAL PROVISION

U.S. Const. amend. I reads in the relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech."

II. STATUTORY PROVISION

28 U.S.C. § 1254 (1) states: "Case in the courts of appeals may be reviewed by the Supreme Court . . . [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

III. CERTIFICATE OF COMPLIANCE

Per Rule IV.C.3 of the Official Rules of the 2025 Seigenthaler-Sutherland Moot Court Competition, we, counsel for Petitioner, certify that the work product contained in all copies of Team 21's brief, is, in fact, the work product of Team 21's members; Team 21 has complied fully with our school's governing honor code; and Team 21 has complied with all rules of the Competition.

TEAM 21

Counsel for Petitioner