No. 24-CV-1982

IN THE SUPREME COURT OF THE UNITED STATES

MONTDEL UNITED,

***Petitioner*,**

v.

STATE OF DELMONT and
DELMONT NATURAL RESOURCES AGENCY,
***Respondent*.**

ON WRIT OF CERTIORARI FROM THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM 025

Counsel for the Petitioner

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II. Whether the Fifteenth Circuit erred in permitting Respondents to transfer Red Rock under the ECIA where it interferes with Montdel United's First Amendment Free Speech rights.

STATEMENT OF THE CASE

The Constitution was founded on the tenets of liberty and equality, entrusting the executive, legislative, and judicial branches to uphold these tenets for the prosperity of **all** people. However, in this case, where in pursuit of prosperity sacrilegious destruction of an entire religious group would ensue, this Court must prioritize the free practice of Montdel United's deeply rooted religious faith over Respondents' superficial gains.

I. Course of Proceedings and Dispositions in the Court Below

Montdel United filed suit against the State of Delmont ("Delmont") and the Delmont Natural Resources Agency ("DNRA") (collectively "Respondents") seeking injunctive relief to prevent the transfer and subsequent destruction of Red Rock under the Energy and Conservation Independence Act ("ECIA"). (R. at 1.) Montdel United contends this transfer infringes upon their First Amendment rights to free exercise of religion and free speech. (R. at 1-2.) Respondents argue the transfer is a valid exercise of statutory authority aligning with state and federal goals of economic development and sustainability. (R. at 2.) The district court granted Montdel United's request for injunctive relief, properly holding Montdel United has a likelihood of success on the merits because: (1) the ECIA warrants strict scrutiny where it is not generally applicable nor narrowly tailored thus eliminating the religious exercise of an ancient faith; and (2) Red Rock is a traditional public forum in which speech may not be restricted apart from permissive time, place, and manner regulations. (R. at 17, 19, 31-32.) The district court further asserted that Montdel

United will likely suffer irreparable harm without the injunction, the balancing of the equities weighs in favor of Montdel United as no viable alternative to Red Rock exists, and the public interest in nature preservation outweighs the predicted economic gains. (R. at 31-32.) Respondents appealed only the likelihood of success on the merits, claiming that strict scrutiny is inapplicable because there has been no coercive prohibition of religious exercise and Red Rock is a nonpublic forum permissibly closed at any time. (R. at 40, 45.) The appellate court incorrectly reversed the granting of injunctive relief. (R. at 33.) From this, Montdel United appeals. (R. at 1.)

II. Statement of the Facts

Petitioner, Montdel United, is an organization committed to safeguarding Montdel religious rituals resiliently practiced at Red Rock for 1,500 years. (R. at 7, 50.) Respondents, Delmont and the DNRA, are Delmont's governance and subservient resource management agency. (R. at 6.)

The Montdel Indigenous Native Americans (the "Montdels") have been practicing their religion, in what is now Delmont, since 400 A.D. (R. at 2.) The cornerstone of this religion turns on ritual ceremonies exclusively taking place in the sacred Red Rock region housed within Painted Bluffs State Park. (R. at 2, 50.) The ritual's participants ("Old Observers") take part in these ceremonies each fall and spring equinox, as well as each summer and winter solstice, engaging in group prayer that must be led by the village elders at Red Rock. (R. at 3.) These group prayers are the Montdels only way to reach their Creator, as their religious doctrine prohibits individual supplicatory prayer. *Id.* If the Montdels deviate in any way from these rigid tenets, it is considered a transgression against the Creator punishable by incurring the Creator's wrath. (R. at 3, 51.)

In 1855, Delmont was formally established by the U.S. Congress. (R. at 3.) The Montdels continued their traditions at Red Rock, uninterrupted with the exception of the World Wars and the Great Depression, despite the dispersion of its members during a transient time of hardships. (R. at 4.) In 1930, when the Montdels' sacred religious site was formally designated as part of the

newly established Painted Bluffs State Park, the Montdels' rituals still remained unfettered. *Id.* Respondents' intent when establishing the park was not to alter the region's historical importance but rather to preserve the area's natural beauty and offer the public opportunities for camping, hiking, and fishing. *Id.* In fact, the former Delmont Governor celebrated the region's rich history at the park's opening ceremony, publicly proclaiming that the region has been home to the Montdel heritage long before Delmont was even a possibility and that the Montdels' "supplications to the Almighty in the Painted Bluffs are part of a legacy the state proudly cherishes." (R. at 4-5.)

These cherished supplications were formalized as the Montdel Observance in 1950; continuing formal pilgrimages to Red Rock, group meetings, and ritual ceremonies led by tribe elders. (R. at 5.) In addition to the hundreds of Old Observers participating in the Montdel Observance, over time the equinox rituals evolved into a festival-like event drawing widespread attendance by college students and seasonal festivalgoers each year. (R. at 5, 52.) Though the festival is purely secular, Respondents have capitalized on the Montdel Observance's increase in popularity by issuing vendor licenses and hosting festival activities for the past twenty years. (R. at 6.)

Twenty years ago, a geological study was conducted unearthing large mineral deposits in Delmont, with the largest lithium deposit surrounding the Red Rock area, drawing attention from mining companies seeking to extract these minerals. (R. at 6-7.) Respondents received ongoing pressures to transfer rights to these deposits, including the one surrounding Red Rock. (R. at 7.) This spurred Priscilla Highcliffe to establish Montdel United in 2016 to oppose the region's transfer, safeguard the Montdel heritage, and protect Red Rock's religious significance. *Id.*

Despite decades of refraining from transfers, Respondents now abandon their promise to preserve the region and adopt an agenda for economic growth and fossil fuel reduction by becoming carbon neutral in fifty years. (R. at 1, 6.) To accomplish its newfound goals, Respondents

enacted the ECIA permitting land transfers for mineral extraction so long as the regions undergo environmental and economic impact studies. (R. at 6.) The ECIA is endorsed by federal executives and legislative bodies as part of their global effort to mitigate fossil fuel reliance, but Respondents ultimately retain discretionary authority to permit or deny each transfer. (R. at 6-7.)

In 2023, Respondents executed the transfer of one-fourth of Painted Bluffs State Park, including Red Rock, to Delmont Mining Company. (R. at 7.) The economic impact study predicts that mining the deposit may promote "substantial economic growth" through job creation, but the environmental impact study definitively concludes that Red Rock will be permanently destroyed. (R. at 8, 48.) While new technologies permitting extraction without total land devastation will be available within twenty years, Respondents claim immediate mineral extraction is necessary. (R. at 8-9.) In the past five years, Respondents twice withdrew transfers to protect endangered species and avoid potential water contamination. (R. at 9-10.) The Governor of Delmont has also been outspoken about his ongoing frustrations with the Montdel rituals. (R. at 47.) Yet still, Respondents adamantly maintain that this decision is made solely with Delmont's agenda in mind. (R. at 9.)

III. Statement of the Standard of Review

In reviewing an interlocutory appeal of a preliminary injunction, this Court "review[s] the [lower court's] legal rulings de novo, and its ultimate conclusion for abuse of discretion." *McCreary Cty. v. ACLU*, 545 U.S. 844, 867 (2005); *see also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428-429 (2006). When a party seeks a preliminary injunction, four factors must be established: a likelihood of success on the merits, sufferance from irreparable harm in the absence of preliminary relief, the balance of equities tip in favor of the injunction, and that it supports the public interest. Fed. R. Civ. P. 65(d); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). This appeal concerns only whether Montdel United's free exercise and free speech claims are likely to succeed on the merits. (R. at 35.)

SUMMARY OF THE ARGUMENT

This Court should reverse the Fifteenth Circuit Court's decision for two reasons. First, the free exercise of religion is protected by the First Amendment and cannot be limited by a law that is not generally applicable and fails the strict scrutiny analysis. Second, freedom of speech is a guaranteed liberty afforded by the First Amendment which may not be restricted in a traditional public forum absent a permissive time, place, and manner restriction subject to strict scrutiny.

This Court primarily applies the Generally Applicable and Neutral framework when assessing free exercise violations. Although Respondents correctly maintain the ECIA grants them decision-making authority as it pertains to executing land transfers, this authority is not an unqualified right to transfer Red Rock in direct conflict with the Free Exercise Clause. The ECIA is not generally applicable, as it enables Respondents to subjectively determine which land transfers to permit, and also fails strict scrutiny as it does not narrowly further compelling state interests. In few instances, this Court has alternatively applied the *Lyng* framework. Nevertheless, *Lyng* draws the same conclusion: the ECIA and transfer of Red Rock interfere with Montdel United's free exercise protections because these actions coerce them to violate their religious faith.

Though Respondents assert the transfer and subsequent destruction of Red Rock for mineral extraction falls strictly within their delegated authority under the ECIA, this authority bears no weight where the regulation impermissibly restricts constitutionally protected speech. Respondents improperly maintain Red Rock is barren and incompatible with commonplace assembly and exchange of ideas. As such, they propose Red Rock is a nonpublic forum ineligible for protection. In traditional public fora, including parks like Painted Bluffs State Park, the First Amendment prohibits speech restrictions in fora historically open for communication. Red Rock is an indistinguishable area enclosed within Painted Bluffs State Park, boasting a long history as

the staple of Montdel religion. It thus cannot be held that Red Rock is incompatible with communicative use, nor that Red Rock should be afforded any less protection than the park it is housed within. Yet still, even if this Court finds restrictions on speech appropriate in such a forum, a restriction must muster approval under strict scrutiny. Moreover, the restriction must be evidently content-neutral, narrowly tailored to achieve a legitimate government interest, and an ample alternative channel of communication must exist. Permitting Respondents to enforce a land transfer for mining that by proxy targets a religious group, jeopardizes not only Montdel United's right to free speech but also this Court's deference to upholding constitutionally protected liberties.

I. THE ECIA AND SUBSEQUENT TRANSFER OF RED ROCK VIOLATE MONTDEL UNITED'S FIRST AMENDMENT FREE EXERCISE OF RELIGION.

The Free Exercise Clause of the First Amendment declares that "Congress shall make no law… prohibiting the free exercise" of religion. U.S. Const. amend. I. The Fourteenth Amendment extends the Free Exercise Clause's protections to defend against unfair state legislation. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*., 508 U.S. 520, 531 (1993). This Clause protects the right to hold and act in accordance with religious beliefs, and further forbids laws that restrict the free practice of religious beliefs. *See Kennedy v. Bremerton School District*, 597 U.S. 507, 524 (2022); *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940). Although this freedom is not absolute, in *Kennedy*, this Court asserted that the Clause "perhaps [does] its most important work by protecting the ability of those who hold religious beliefs … to live out their faith in daily life through the performance of … physical acts." *See* 597 U.S. at 524. To determine if the Free Exercise Clause's protections apply, this Court has used two distinct frameworks: the Generally Applicable and Neutral framework and the *Lyng* framework. *See id.* at 525.

Under the Generally Applicable and Neutral framework, a law is subject to strict scrutiny if the plaintiff can show that the regulation "burden(s) his sincere religious practice pursuant to a policy

that is not 'neutral' or [not] 'generally applicable.'" *Id.*; *see also Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 879-881 (1990). A defendant will only satisfy this high strict scrutiny threshold if he clearly demonstrates the law at issue is narrowly tailored to advance "interests of the highest order." *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 546. A law that is unreasonably broad in its pursuit of legitimate public interests will not survive strict scrutiny. *See Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 541-542 (2021).

The *Lyng* framework, by contrast, applies strict scrutiny only to generally applicable laws. (R. at 29.) Government actions that incidentally make religious practice more challenging but stop short of coercing individuals to act contrary to their beliefs, do not warrant strict scrutiny. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988). However, if a plaintiff can show that governmental regulations coerced him into violating his religious beliefs, the regulation merits stringent strict scrutiny analysis. *Id.* at 449. "The Free Exercise Clause affords an individual protection from certain forms of governmental compulsion." *Id.* at 448.

We respectfully ask this Court to reverse the appellate court's reversal of injunctive relief because (1) the appellate court should have applied the Generally Applicable and Neutral framework; (2) the *Lyng* framework should not have been utilized as the ECIA is not a generally applicable regulation; and (3) even if this Court applies the *Lyng* framework, the ECIA and transfer of Red Rock coerce the Montdels to violate their own religious beliefs which is unconstitutional.

A. Under the Generally Applicable and Neutral Framework, the ECIA Violates Montdel United's Free Exercise of Religion.

A preliminary injunction is likely to succeed on the merits when the law in question runs contrary to the First Amendment's religious freedoms. *See Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 547. The Free Exercise Clause protects religion. *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981). Once a religious belief is established, the

court shall determine "if the law at issue discriminates against [that] religious belief." *See Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 532. To determine which judicial review standard is appropriate to assess if a law discriminates against the exercise of a religious belief, courts apply the *Smith* court's Generally Applicable and Neutral framework. *Fulton*, 593 U.S. at 533. A law is not generally applicable if it permits the government to make individualized exemptions. *Id.* at 533. A law is not neutral if it "proceeds in a manner intolerant of religious beliefs." *Id.* Laws that fail this framework trigger strict scrutiny. *Kennedy*, 597 U.S. at 508. Government action that "targets religious conduct for distinctive treatment" only rarely survives strict scrutiny. *Church of Lukumi Babalu Aye, Inc*., 508 U.S. at 546. It follows that Montdel United's free exercise claim will likely succeed on its merits because the Red Rock transfer impedes Montdel religious practice.

1. Closing Red Rock Discriminates Against Montdel United's Religious Practices.

The government does not have absolute authority to restrict religious expression. *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 687 (1992). Under the Generally Applicable and Neutral framework, laws may not significantly burden religious practitioners in a manner opposite their religious principles. *See Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972).

Courts are not to examine one's religious beliefs to determine whether those beliefs fall under the Free Exercise Clause's protection. *See Thoma*s, 450 U.S. at 715; *see also Fowler v. State of R.I.*, 345 U.S. 67, 70 (1953) (concluding the judiciary's role is not to determine whether one's religion falls under the First Amendment). In *Thomas*, a Jehovah's Witness quit his job after discovering his employer transitioned to weaponry, which violated his religious principles. 450 U.S. at 710. The Jehovah's Witness was denied unemployment benefits where the Indiana Supreme Court believed his reasons for quitting turned on personal philosophical objections to the company's new line of work, rather than religious tenet. *Id.* at 710-711, 714. This Court reversed

the Indiana Supreme Court's decision, holding the court must not discern if the religious beliefs are consistent, acceptable, or reasonable to extend free exercise protections. *See id.* at 714, 720.

The Free Exercise Clause applies to the Montdel religion. In *Thomas*, this Court held that it was clear from the record that the Jehovah's Witness's reasons for quitting were religious and therefore protected under the Free Exercise Clause. *Id.* at 716, 720. This case presents analogously where the record clearly indicates that the Red Rock rituals are crucial to the practice of Montdel religion. (R. at 4-5, 51.) The closure of Red Rock under the ECIA would prohibit ritual prayers at Red Rock, forcing the Montdels to commit transgressions against their Creator. (R. at 51.) Just as in *Thomas*, where the judiciary was not to play an investigatory role, this Court's review is limited to the record which obviates that Montdel religion earns free exercise protections. *See id.* at 716.

A law that burdens an individual's ability to freely exercise his religion merits judicial examination under the First Amendment. *Fulton*, 593 U.S. at 523. In *Fulton*, the city of Philadelphia informed the Catholic Social Services (CSS) that if it did not start permitting same-sex couples to be foster parents it would stop referring children there. *Id.* at 522. CSS filed suit, claiming this ultimatum forced it to either discontinue its foster care services or violate its religious principles. *Id.* at 532. This Court held that the Free Exercise Clause applied because CSS would be substantially burdened where city referrals were contingent on CSS acting against its faith. *Id.*

The Respondent's actions substantially burdened the Montdels by impelling them to give up the key piece of their religious traditions. (R. at 27.); *see id.* Like *Fulton*, where the city burdened CSS by forcing it to either violate its religious principles or lose the city's foster referrals, Respondents' transfer of Red Rock burdens the Montdels by compelling them to either relocate their rituals or cease group supplicatory prayer; both of which are expressly prohibited. (R. at 27.) Unlike other religions with numerous places of worship, the Montdels only have Red Rock and

without it face extinction. (R. at 3, 53.) Therefore, there is no fear of "sacralizing the world" as the exclusive symbiotic relationship between the Montdel Observance and Red Rock is rare. (R. at 2-3, 27.) Closing Red Rock places an inescapable burden that substantially harms the practices of the Montdel religion, meriting judicial examination under the First Amendment. (R. at 27.)

We respectfully request this Court reverse the appellate court's denial of injunctive relief to ensure the Montdels may freely exercise their religion independent from governmental burden.

2. The ECIA and Subsequent Transfer of Red Rock are not Generally Applicable.

A law of general applicability cannot intentionally "impose burdens" on religious conduct, but not secular conduct, that threatens public interest. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 543. Even if the government does not formally set an exception within the law, its ability to create one at any time is enough to deem the law not generally applicable. *Fulton*, 593 U.S. at 537.

A generally applicable law does not provide the government with a method of "individualized governmental assessment" which permits the government to grant exceptions "depending on the reasons for the relevant conduct." *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 537; *see also Fulton*, 593 U.S. at 523 (holding a generally applicable law does not allow the government to individually assess justifications behind conduct). In *Church of Lukumi Babalu Aye, Inc*., a church filed suit against the city after policies were enacted outlawing ritual animal sacrifices to further the city's interests in public health and preventing animal cruelty. 508 U.S. at 520, 538. The Eleventh Circuit affirmed the district court's denial of relief, simply stating that the regulations were in line with the Constitution. *Id.* at 530. On appeal, this Court reversed the lower court's decision, holding the city's policy was not generally applicable because the policy focused solely on the church's animal sacrifices instead of generally encompassing all hazardous animal disposal methods. *Id.* at 538. This Court further declared that a generally applicable law does not permit the

city to subjectively exempt any animal killings that it deems "necessary." *Id.* at 537; *see Kennedy*, 597 U.S. at 526-527 (concluding school district's post-game student supervisory policy not generally applicable as it only restricted Coach Kennedy from praying on the field after games, while allowing other coaches to take phone calls or visit friends, instead of watching students).

Respondents subjectively determined whether the transfer of Red Rock should occur. In *Church of Lukumi Babalu Aye, Inc.*, the city enacted a regulation prohibiting only religious animal sacrifice, following residents' concerns about public health. 508 U.S. at 537-538. Similarly in *Kennedy*, the school district subjectively determined that praying on the field violated their post-game supervisory policy. 597 U.S. at 526-527. Here, Respondents implemented the ECIA to improve Delmont's economy and environment, but at this time, the only transfer underway targets the Montdels' ritual site at Red Rock. (R. at 6-7.) *See Roman Catholic Bishop of Springfield v. City of Springfield*, 724 F.3d 78, 92 (1st Cir. 2013) (clarifying that laws pertaining only to one plot of land will never be generally applicable). Though economic and environmental impact studies reveal a viable deposit at Red Rock, mining this region would cause more harm than good. Montdel United has raised legitimate concerns that their religion will cease to exist if the transfer goes through. (R. at 8.) On two occasions, Respondents have withdrawn from land transfer agreements, once to preserve the habitat of two endangered species and once to prevent water contamination, believing these causes merited extra caution. (R. at 9-10.) Like the endangered species, the Montdels have dwindled to only a few hundred practitioners. (R. at 3, 28.) This transfer threatens the religion's existence, but Respondents have decided protection of the fragile Montdel Observances does not necessitate withdrawing from Red Rock's transfer. Respondents' opinion-driven decisions in withdrawing transfers, enabling them to give less weight to religious conduct or objections to further their own purported interests, shows the ECIA is not generally applicable.

It follows that this Court should reverse the appellate court's holding and determine that the ECIA and land transfer of Red Rock were not generally applicable.

3. The Transfer of Red Rock Does Not Pass Strict Scrutiny.

A law restricting the free exercise of religious beliefs is subject to strict scrutiny when it is not generally applicable. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S. at 546. To satisfy this rigorous standard, the law must be narrowly tailored to advance a compelling state interest of the highest order. *Id.* "Rather than rely on broadly formulated interests, courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Fulton*, 593 U.S. at 541.

Laws which advance a compelling interest by way of restricting religious conduct, but not secular conduct, are not generally applicable and must be analyzed under strict scrutiny. *Church of Lukumi Babalu Aye, Inc.*, 508 U.S at 546-547. As in *Lukumi*, where the city's animal sacrifice prohibition was not generally applicable and thus subject to strict scrutiny, the ECIA is also not generally applicable and calls for strict scrutiny. *Id.* at 537-538. Respondents seek to accomplish their interests only by mining Red Rock. (R. at 7.) The ECIA cannot be seen as protecting interests of the highest order where Respondents made exceptions to protect from species' extinctions and water contamination but, refused to withdraw Red Rock's transfer to the detriment of the Montdel Observance. (R. at 8-10.) After making previous exceptions, Respondents cannot now claim that their interests are vital only in the face of the Montdels' religious objection. *Id.* at 547. Furthermore, these interests are even less compelling because it will come at the cost of the Montdel Observance, which in effect will eliminate the Montdel religion. (R. at 53.); *see Fulton*, 593 U.S. at 541.

To achieve its compelling interest, the government must also show that it would engage in "one of the gravest abuses of its responsibilities" if it did not act in its chosen manner. *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 696 (2020) (Alito, J.,

concurring). Here, Respondents would not be committing a grave abuse of their responsibilities where mining any of Delmont's other deposits would further their goals. (R. at 47.) When the government can accomplish its interests without restricting religious practices it must do so. *Fulton*, 593 U.S. at 540. If anything, Respondent commits a graver abuse by mining Red Rock as it would destroy a historic landmark and further sever the deteriorating relationship between the U.S. and Native Americans. (R. at 8, 31.) Additionally, Delmont's economy would actually *benefit* from moving mining elsewhere for two reasons: first, the economy would benefit from the job creation resulting from increased mining, and second, if Montdel Observances continue then Delmont will also continue generating revenue through its permit grants. (R. at 5-6, 48.)

In *Wisconsin v. Yoder*, this Court proclaimed that the First Amendment's Free Exercise Clause must be "zealously protected," even sometimes at the expense of other important interests. 406 U.S. at 214. As such, we respectfully ask that this Court reinstate the district court's granted preliminary injunction, and continue to safeguard the fundamental values of the Free Exercise Clause, where the ECIA and Red Rock transfer are not generally applicable and fail strict scrutiny.

B. Even Under *Lyng,* the ECIA is Still Unconstitutional.

Only if this Court finds the ECIA generally applicable will the *Lyng* framework be appropriate. Under the *Lyng* framework, laws that directly or indirectly coerce individuals to violate their religious beliefs must undergo strict scrutiny. 485 U.S. at 449-450. If a law uses coercion to limit religious practices and fails strict scrutiny, then free exercise protections apply. *See id.* at 449.

The *Lyng* framework should be applied only to generally applicable laws. *See id.* In *Lyng*, the Forest Service needed to build a road directly through Six Rivers National Forest to connect two other roads. *Id.* at 442. As confirmed by the commissioned report, this road would interfere with areas used by Native Americans to conduct religious practices. *Id.* The Forest Service still approved the road construction, as the entirety of the forest had ritualistic value to the Native

Americans. *Id.* at 443. The Native Americans filed suit claiming this construction violated their free exercise rights and both lower courts enjoined the construction. *Id.* at 440, 442-443. This Court reversed, holding government actions that do not coerce individuals to violate their religious beliefs do not mandate strict scrutiny. *Id.* at 449. However, this Court clarified that if the Native Americans were banned from visiting their only sacred area, a different constitutional question would be raised. *Id.* at 453.

The *Lyng* framework should not be applied because the ECIA is not generally applicable. In *Lyng*, the forest area used by Native Americans could not be individually excepted from construction where the entire forest had religious significance, and construction through the forest was the only way to connect both roads. *Id.* at 442. Distinguishably, here, numerous other deposits available for mining exist within Delmont. (R. at 6.) Respondents have also previously made exceptions for secular reasons and are further capable of making such an exception for the sacred Red Rock. (R. at 47-48.) Unlike in *Lyng*, where the construction was objectively necessitated, Respondents use the ECIA to subjectively exempt only some lands from transfer. (R. at 6.); *id.*

Nonetheless, free exercise claims under *Lyng* must be analyzed to determine if the law did more than interfere with ones' spiritual fulfillment. *Id.*; *see also Apache Stronghold v. United States*, 95 F.4th 608, 622 (9th Cir. 2024) (holding government action prohibiting individuals from pursuing spiritual fulfillment but not coercing them to violate religious beliefs ineligible for free exercise protection). Unlike *Lyng*, where the Native Americans' could conduct their religious practices at any of their other sacred sites within the forest, the Montdel, by contrast, may only communicate with their Creator at Red Rock. (R. at 53.); 95 F.4th at 615. Montdel doctrine requires village elders to lead group prayer rituals at Red Rock during solstices and equinoxes. (R. at 51.) If the elders cease conducting these rituals at Red Rock, they will be stripped of their elder status

leaving no elders to lead future group prayers thus coercing the Montdel to violate their religious beliefs. (R. at 51.) Where such coercion occurs, the Red Rock transfer requires strict scrutiny.

We respectfully request this Court reverse the appellate court's denial of injunctive relief because even when improperly applying *Lyng,* the transfer of Red Rock still coerces the Montdel to violate their religious doctrine.

II. THE ECIA AND SUBSEQUENT TRANSFER OF RED ROCK VIOLATE MONTDEL UNITED'S FIRST AMENDMENT RIGHT TO FREE SPEECH.

The First Amendment prohibits Congress from enacting any law abridging free speech. U.S. Const. amend. I.; *Gitlow v. New York*, 268 U.S. 652, 666 (1925). Claims under the Free Speech Clause "are [to be] analyzed in three steps: First "we must decide whether the speech is protected by the First Amendment, for if it is not, we need go no further. Second, assuming the activity "is protected speech we must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." Third, we must assess whether the government's justifications for restricting speech in the relevant forum "satisfy the requisite standard."" *Boardley v. U.S. Dep't of Interior*, 615 F.3d 508, 514 (D.C. Cir. 2010). This Court has declared when constitutionally protected speech, like religious speech, is restricted in a traditional public forum dedicated to the free exchange of ideas, the restriction must be analyzed under strict scrutiny. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 460 (2009).

The appellate court's reversal of injunctive relief disproportionately harms Montdel United. Respondents initiated the transfer of Red Rock, a time-honored Montdel religious landmark, to a private mining company for mineral extraction under the facade of environmental and economic concern. (R. at 6-8.) Despite the availability of numerous other mineral deposits, Respondents use the ECIA to strip Red Rock away from Montdel United. (R. at 9.) In exchange, Delmont will receive a plot of land equivalent in economic value, but devoid of all religious import. (R. at 8.)

As courts favor prosperity for all, it is plausible to grant injunctive relief preventing the imposition of government regulations that restrict protected speech.

This Court should reinstate the preliminary injunction because (1) the transfer will restrict speech at Red Rock, a portion of Painted Bluffs State Park, entitled to the utmost protection as a traditional public forum, and (2) where the ECIA and transfer of Red Rock is not content-neutral, narrowly tailored to serve a substantial government interest, nor provides an alternative channel of communication for the Montdels' faith-based practices, the semblances of economic and environmental benefit inadequately justify this constitutionally impermissible restriction.

A. Red Rock is a Traditional Public Forum in Which Speech May Not be Restricted.

"In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed." *Perry Educ. Assn. v. Perry Loc. Educators' Assn.*, 460 U.S. 37, 46 (1983). Public parks, historically associated with the free exercise of expressive activities, are considered, without more, to be public fora. *United States v. Grace*, 461 U.S. 169, 171 (1803). As such, the Court must recognize that "wherever the title of a park may rest, [it] has immemorially been held in trust for the use of the public." *Frisby v. Schultz*, 487 U.S. 474, 479 (1988).

Public parks are quintessential public fora. *Grace*, 461 U.S. at 171. In *Leydon v. Town of Greenwich*, the plaintiff sought injunctive relief following the passage of a town ordinance excluding nonresidents' access to the beachfront town park. 777 A.2d 552, 557-558 (Conn. 2001). The Connecticut Supreme Court affirmed the lower court's granting of injunctive relief, holding the ordinance violated the First Amendment because "Greenwich Point is a traditional public forum [with] the characteristics of a public park." *Id.* at 554; *see also Naturist Soc., Inc. v. Fillylaw*, 958 F.2d 1515, 1515 (11th Cir. 1992) (reversing summary judgment holding beach park used for recreational swimming, games, and enjoyment of surroundings equivalent to typical city park

receiving traditional public forum designation). *Contra Boardley*, 615 F.3d at 515 (reversing injunctive relief holding portions of national parks never dedicated to assembly and incompatible with such use, are nonpublic fora despite location in park). *But see State v. Ball*, 796 A.2d 542, 543 (Conn. 2002) (holding undeveloped state forest used for hiking, picnicking, camping, and fishing a nonpublic forum where forest's purpose is to remain an undisturbed recreational area).

Red Rock falls squarely within the category of parks constituting traditional public fora. In *Leydon*, the Connecticut Supreme Court upheld injunctive relief because Greenwich Point contains "shelters, ponds, a marina, a parking lot, open fields, a nature preserve, walkways, trails, picnic areas with picnic tables, a library book drop and a beach" clearly qualifying it as a park entitled to traditional public forum protections. 777 A.2d at 570. The court in *Fillylaw*, similarly maintained that a beach park used by the public to "swim, play games, rest, and enjoy the surroundings," like a city park indisputably protected as a traditional public forum, is also a traditional public forum. 958 F.2d at 1522. Analogously, Painted Bluffs State Park offers the public a place for camping, hiking, and fishing. (R. at 4.) The appellate court herein fervently disagrees, believing Red Rock's natural terrain is a nonpublic forum comparable to the undeveloped state forest in *Ball*. (R. at 38.); 796 A.2d at 552. The court erroneously interpreted *Ball* to suggest physical characteristics alone are determinative of forum designation. *Id.* This oversimplified interpretation omits the *Ball* court's clarification that the park in *Leydon* is a traditional public forum because its developments facilitate public communication, not because picnic tables and book drops physically exist on site. 796 A.2d at 549-550. As both *Leydon* and *Fillylaw* maintain, an area's communicative use is what earns all parks, including Red Rock, traditional public forum status. *Id.* at 554; 958 F.2d at 1522.

In the face of this longstanding notion that all parks are traditional public fora, Respondents urge this Court to ignore Supreme Court precedent and instead adopt the D.C. Appellate Court's

loophole in *Boardley*. (R. at 13.) The *Boardley* court held despite public parks' traditional public fora status, remote portions of public parks never dedicated to assembly and incompatible with such use may separately be deemed unprotected nonpublic fora. 615 F.3d at 515. Comparing Red Rock, a religious monument fostering centuries of public gatherings, to a desolate wilderness area is fallacious. (R. at 2.) Red Rock is compatible with, and aptly used for, assembly. (R. at 3.) This Court should instead follow its precedent in *Grace*, 461 U.S. at 178 (holding government building's perimeter sidewalks attached to city streets, lacking any indication to public they were nonpublic grounds, were traditional a public forum) and *Gerritsen v. City of Los Angeles*, 994 F.2d 570, 575 (9th Cir. 1993) (finding where no visual distinction separates nonpublic sections from remainder of public forum, entire area is a public forum). Even if Red Rock were a remote space unaffiliated with assembly, where nothing isolates Red Rock from the greater Painted Bluffs State Park, its traditional public forum protection "follow(s) automatically from this identification." *Frisby*, 487 U.S. at 479. No particularized inquiry into the park's precise nature is necessary; all public parks are held in the public trust and properly considered traditional public fora. *Id.*

Red Rock has been dedicated to assembly through tradition and government fiat. Respondents' final attempt to dispel Red Rock's traditional public forum status turns on a mere technicality; the Montdels did not visit Red Rock during the global hardships of the World Wars and the Great Depression. (R. at 4.) Respondents argue these three instances make the Montdels' centuries-old routine "occasional," entitling them to destroy this most necessary conduit in Montdel daily affairs. (R. at 15.) This argument is misguided, clumsily suggesting *Heffron v. Int'l Society for Krishna Consciousness*, 454 U.S. 640, 651 (1981) (holding fairgrounds open seasonally dissimilar from continuously open streets) unequivocally negates Red Rock's traditional public forum status. This analogy does the opposite. Red Rock has never been closed. (R. at 16.) As deduced by the district

court, and adduced by *Gerritsen,* Red Rock is part of Painted Bluffs State Park which is open year-round. *Id.* The "continuously open" standard relies not on continuous use, but that the area never closes. *See id.* As such, *Heffron* supports designating Red Rock as a traditional public forum. Red Rock's continuously open nature has also been established through government fiat. (R. at 4.) Since the park's inception, Respondents have capitalized on Montdel Observance. *Id.* At the park's opening ceremony, the Delmont governor made an executive proclamation that the Montdels have been "part of the land for centuries before there was ever a thought of such a thing as Delmont." *Id.* Effectively, the governor codified the Montdels *continued* use of this land. While Respondents correctly assert a forum's unauthorized use does not create a traditional public forum, it would be egregious to find Respondents' conveniently unaware of the Montdels use of Red Rock.

Where Red Rock is enclosed within Painted Bluffs State Park and the region has been dedicated to assembly and free speech through both tradition and Respondents' fiat, we respectfully request this Court reverse the appellate court's reversal of injunctive relief.

B. The Closure of Red Rock as a Traditional Public Forum Implicates Strict Scrutiny.

Red Rock is a public forum in which speech may not be restricted on the government's whim. Speech restrictions in public fora are appropriate only if they satisfy strict scrutiny. *Pleasant Grove City*, 555 U.S. at 460. The "government's ability to permissibly restrict expressive conduct is very limited: government may enforce reasonable time, place, and manner regulations as long as restrictions are content-neutral, narrowly tailored to serve significant governmental interest, and leave open ample alternative channels of communication." *Grace*, 461 U.S. at 171.

1. The ECIA is not Content-Neutral.

Regulations are content neutral only when "justified without reference to the content of the regulated speech." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976). Regulations targeting content in a *viewpoint discriminatory* manner are not

content neutral even if their purpose is facially unrelated. *Boardman v. Inslee*, 978 F.3d 1092, 1113 (9th Cir. 2020). In determining content neutrality, the government's purpose is the controlling consideration with the principal inquiry being if the restriction was adopted to dispel a message the government disagrees with. *Ward v. Rock Against Racism*, 491 U.S. 778, 781 (1989).

Regulations adopted under the guise of impartiality, enacted with the intent of targeting specific speech, are not content-neutral. *Id.* In *Ward*, a music sponsorship group brought action against New York City ("City") seeking a declaratory judgment after City imposed a Use Guideline for the bandshell event area to solve the problem of noise interferences disturbing nearby recreation. *Id.* The district court found in favor of City, and the appellate court, though reversing on other grounds, concurred that the guideline was content-neutral because it lacked reference to the content of the regulated speech. *Id.* The Supreme Court affirmed the guideline's neutrality, holding the Use Guideline was plainly content neutral because City's principal justification was to reduce excessive noise and City explicitly disavowed all subjective motives. *Id.* at 783; *see also Int'l Soc'y for Krishna Consciousness*, 505 U.S. at 694 (Kennedy, A., concurring) (striking down ban on distributing printed materials holding total ban incompatible with airport's safety goals but time, place, and manner restriction appropriate where ban has apparent, content neutral justification).

Respondents used the ECIA to impose viewpoint-based restrictions. In *Ward*, this Court held the guideline was content-neutral because the City had an objective interest in reducing noise AND demonstrated the regulation was not subjectively motivated by a desire to restrict speech against racism. 491 U.S. at 783. In *Lee*, Justice Kennedy concurs with this idea, holding a time, place, and manner restriction on the airport's total distribution ban appropriately content neutral because the ban's justification is unrelated to the content of the speech. 505 U.S. at 705 (Kennedy, A., concurring). Here, the district court drew a surface-level conclusion, finding the ECIA neutral

because it applies equally to all speakers. (R. at 21.) However, in drawing that conclusion, the court naively believed that Respondents were uninterested in using the ECIA to regulate speech *Id.* While it is true the Court need not "make a searching inquiry of hidden motive," *Menotti v. City of Seattle*, 409 F.3d 113, 1129 (9th Cir. 2005), Respondents explicitly utter their disparaging motives blatantly obviating the ECIA's lack of neutrality. *Ward*, 491 U.S. at 783. Though Respondents disguise the ECIA's purpose as "reducing fossil fuel and boosting the local economy," Secretary Greenfield, head of the State Natural Resources Agency, supplied an affidavit exposing the Governor's dismissal of DNRA members' concerns for the Montdel Observance, referring to them as nuisances. (R. at 47.) Though this clear irreverence for the Montdels does not discredit the ECIA's facially valid goal of reducing fossil fuel consumption, it calls into question Respondents' underlying motives for transferring Red Rock as their designated one-fourth of the park.

The extraction of resources must be the primary purpose for enacting the ECIA; not merely a ploy to remove bothersome speakers. Thus, this Court should reinstate the preliminary injunction.

2. Transferring Red Rock Under the ECIA is not Narrowly Tailored to Serve Respondents' Interest in Reducing Fossil Fuel Consumption.

In quintessential public fora, the government may not prohibit communicative activity without showing the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. *Perry*, 460 U.S. at 46. Such prohibitions must be narrowly tailored, "promoting a substantial governmental interest that would be achieved less effectively absent the regulation, and through means chosen [that] are not substantially broader than necessary to achieve interest." *Ward*, 491 U.S. at 783. Closure of a traditional public forum triggers strict scrutiny obligating that where a plausible, less restrictive alternative exists, it must always be used unless the Government proves, through more than mere anecdotal evidence, the alternative will be ineffective to achieve its goals. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 812 (2000).

A narrowly tailored restrictive regulation, serving a legitimate government interest, must demonstrate both its sufficiency and superiority over other methods, through more than inferential benefit. *Id*. In *Playboy Ent. Grp., Inc.*, a television programmer sought a declaratory judgment against the United States claiming the Telecommunications Act's "signal bleed" policy, requiring cable operators to scramble sexually explicit channels or limit programming of such channels to certain hours, was a violation of the First Amendment. *Id.* at 803. The Supreme Court affirmed the district court's finding that the signal bleed was a content-based restriction subject to strict scrutiny and as such, the government's weakly anecdotal evidence was insufficient to justify overlooking an existing less restrictive regulation capable of achieving the same narrow goal. *Id.* at 819.

The benefits anticipated by destructively mining Red Rock are inconclusive. In *Playboy Ent. Grp., Inc.*, the Supreme Court affirmed the government had a valid interest in shielding children from sexually explicit conduct but that the signal bleed regulation was not narrowly tailored where supported only by an empirical study speculating how many people *could* be impacted without the regulation, as opposed to how many people *would* be impacted. 529 U.S. at 819. In the case at hand, Respondents indistinguishably fail to demonstrate how mining Red Rock will directly boost Delmont's environment and economy, through evidence surpassing mere predictions. As the District Court properly concedes, the ECIA was enacted to promote the mining of lithium, nickel, iron, and copper to reduce fossil fuel dependency in the face of global climate change and boost the state's economy complying with federal law. (R. at 6, 23.) The legislation permits all land transfer agreements for mineral extraction, so long as environmental and economic impact studies indicate the destruction of these lands will marginally further the government's valid interests. *Id.* Respondents, however, justify destroying Red Rock in pursuit of these interests only by surmising the impact studies' unfounded environmental and economic boosts will, in some

vague manner, ensue. (R. at 9.) Respondents offer even less substantiated, more inferential evidence, than the *Playboy Ent. Grp., Inc.* empirical studies. 529 U.S. at 819. This Court should thus again hold the evidence inadequate support for Respondents' substantial government interest.

Furthermore, Respondents acquired Painted Bluffs State Park, including Red Rock, with the intent of preserving the region's natural beauty. (R. at 4.) Yet now, Respondents are eager to destroy this natural beauty though cognizant of technologies capable of salvaging Red Rock without compromising Delmont's goals. (R. at 9.) Respondents hastily reject these less invasive alternatives because they may not become feasible for twenty years. (R. at 8-9.) However, this twenty-year timeline, albeit slower than immediately, still enables Respondents to become carbon-neutral within their fifty-year goal. (R. at 1.) Additionally, though mining Red Rock's lithium deposit to create lithium-ion batteries is one way to further the federal agenda, it is not the only way. (R. at 9.) Delmont hosts numerous nickel, iron, and copper deposits each providing renewable energy sources without destroying the Montdels only religious site. (R. at 6.) As such, the district court, even applying a lower intermediate scrutiny not requiring available less restrictive alternatives always be used, *still* found Respondents failed to demonstrate that Red Rock's decimation substantially furthers Delmont's supposed interest in climate improvement. (R. at 25.)

As Respondents failed to narrowly tailor the transfer under the lower intermediate scrutiny threshold, Respondents plausibly have still not met this burden under the higher strict scrutiny. This Court should thus reverse the appellate court's reversal of injunctive relief.

3. Transferring Red Rock Eliminates All Channels of Communication for Montdel Religious Practice.

Speech may not be restricted in a public forum without leaving open "ample alternative channels for communication of the information." *See Ward*, 491 U.S. at 802. Where "there is no

other venue which compares to the restricted [forum] there is no ample alternative channel available." *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 986 (S.D. Ohio 2002).

Alternative venues of communication that reduce the quantity of possible expression, are not ample alternative channels. *See Vincenty v. Bloomberg*, 476 F.3d 74, 88 (2nd Cir. 2007). In *Chabad of S. Ohio*, Chabad sought injunctive relief restraining the City of Cincinnati from enforcing an ordinance halting approval of Fountain Square permits from November through January, prohibiting Chabad from displaying its Hanukkah menorah. 233 F. Supp. 2d at 976-978. The district court granted the injunction and held Fountain Square was the only Cincinnati forum capable of displaying Chabad's menorah before 300,000 people each holiday season, and thus no ample alternative channel of communication existed. *Id.* at 986. *But see United States v. Griefen*, 200 F.3d 1256, 1261 (9th Cir. 2000) (holding temporary closure of small portion of forest left ample alternative channels as protesting could continue within remainder of forest and elsewhere).

The destruction of Red Rock would preclude the Montdels from religious practice. In *Chabad of S. Ohio*, the court enjoined the City from restricting Chabad from displaying its menorah in Fountain Square where no other venue supports a comparable audience. 233 F. Supp. 2d at 976-978. Prohibiting the Montdels access to Red Rock would be even more egregious. An alternate forum wouldn't simply decrease engagement with Montdel religion, it would eradicate it. Unlike in *Griefen*, where protestors were temporarily restricted from protesting in a portion of the Nez Perce Forest but still capable of disseminating their message in other areas, the Montdel Observance may not be conducted outside of Red Rock. 200 F.3d at 1262. The Montdels believe their Creator can only be reached via group supplicatory prayer led by village elders during the equinox festivals at Red Rock. (R. at 3.) In fact, Montdel doctrine prohibits individual supplicatory prayer in any other location, making Red Rock the only outlet for the Montdel Observance. *Id.*

Secretary Greenfield halfheartedly offers to alleviate the loss of Red Rock by relocating the equinox festivals, already hosted a mile from Red Rock, five miles further down the riverbanks. (R. at 15, 48.) These festivals however, attended only by college students and festival goers, have no religious significance. (R. at 6.) As such, it would be a gross misconception to find an alternate location for the equinox-inspired festivals to be an ample alternative channel of communication for the Montdel Observance. If the Montdels lose Red Rock, they lose Montdel religion altogether.

This Court should restore the preliminary injunction where Montdel doctrine prohibits prayer outside of Red Rock, and as such without Red Rock, the Montdel religion will cease to exist.

CONCLUSION

For the foregoing reasons, Montdel United respectfully requests this Court reverse the Fifteenth Circuit's decision based on this Court's conclusion that Respondents transfer of Red Rock under the ECIA is not generally applicable and restricts speech in a traditional public forum, both of which require strict scrutiny; which the transfer fails.

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Respectfully Submitted,

Team 025

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Brief Certificate

We certify that ***we each have complied with the academic integrity requirements*** *of the School of Law Honor Code, and the instructions and rules set forth by the 2025 Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition. We have neither given nor received any unauthorized assistance in preparing this brief. The work product contained in this brief is solely the work of Team 025.*