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 RESPONDENT

TEAM 28

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

1. Does a land transfer of government-owned property violate the Free Speech Clause of the First Amendment if the property would no longer be accessible to the public?
2. Does a land transfer of government-owned property violate the Free Exercise Clause of the First Amendment when it will result in the destruction of a religious site?

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STATEMENT OF JURISDICTION

The District Court concluded Montdel United's claim could succeed on the merits on March 1, 2024, with original jurisdiction pursuant to 28 U.S.C. § 1331. R. at 32. The United States Court of Appeals for the Fifteenth Circuit, with jurisdiction pursuant to 28 U.S.C. § 1291, reversed and entered final judgment on in favor of Defendants on November 1st, 2024. R. at 45. This Court granted Montdel United's Writ for Certiorari on January 5th, 2025. R. at 55. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Free Speech and Free Exercise Clauses of the First Amendment of the United States Constitution.

STATEMENT OF CASE

I. Statement of Facts

The State of Delmont (hereinafter "Delmont") was established in 1855 as one of the largest states in the United States. R. at 3, 6. Known for its mineral-rich geology, Delmont's economy relies heavily on its mining industry. R. at 6. In pursuit of new initiatives to reduce dependency on fossil fuels, and to stimulate economic growth, Delmont enacted the Energy and Conservation Independence Act ("ECIA") in 2022. R. at 1–2, 6, 47. Both the federal executive and legislative branches endorsed the ECIA, as it aligned with national mandates to mitigate fossil fuel extraction. R. at 7. The ECIA authorized Delmont to enter into land transfer agreements with private mining

companies to extract valuable natural resources. R. at 6. Each land transfer is required to be independently appraised to ensure the exchange is subjected to independent environmental and economic impact studies. R. at 6, 47. Following these studies, the Delmont Natural Resources Agency ("DNRA") determines whether the transfer is aligned with government interests. R. at 6. Delmont withdrew from two transfer agreements which ran counter to the ECIA's priorities. R. at 9–10.

In January 2023, the DNRA approved a land transfer for one-fourth of Painted Bluffs State Park ("Painted Bluffs"), including the Red Rock area, to Delmont Mining Company. R. at 7, 47. Delmont acquired the region of Painted Bluffs in 1930 through the power of eminent domain. R. at 4. Painted Bluffs has been used by the public for various purposes, including camping, hiking and fishing. R. at 4. Red Rock—a prominent landmark—has been recognized as a sacred site for an Indigenous Native American group historically referred to as the Montdel people. R. at 2, 50. The Montdel people's religious beliefs reject the idea of individual prayer; instead, its members take part in seasonal religious sacrifices and supplications led by village elders at the base and top of Red Rock. R. at 3, 50–51. This group has sporadically participated in religious ceremonies at Red Rock—even after it had been designated as a state park. R. at 2–4, 52. Interruptions to the rituals included the World Wars and the Great Depression. R. at 4. Montdel religious practices were formally termed "Montdel Observance" as part of an effort in 1950 to revitalize the group's culture. R. at 5, 50. Subsequently, the rituals received significant public attention, culminating in a bi-annual community-wide festival held during the fall and spring equinoxes. R. at 5. Attendees of the festivals included college students and tourists, but notably no Montdel Old Observers. R. at 6. The festival had numerous recreational activities, including dances, stargazing, singing, crafts, art displays, and political speeches. R. at 6. Delmont eventually began issuing licenses for food, music and merchandise to help boost its tourism economy. R. at 6.

The process and idea of executing a land transfer of Painted Bluffs began almost twenty years ago, when a geological study revealed the largest lithium deposit in the United States. R. at 7, 47. This development led to the establishment of Montdel United, a non-profit organization comprised of Old Observers and Montdel descendants seeking to protect land of religious significance. R. at 7. Despite efforts to the contrary, many Delmont communities supported potential land transfers of Painted Bluffs. R. at 7. These communities rely heavily on tourism and were encouraged by the potential for economic revitalization. R. at 7, 47–48.

In considering potential Painted Bluffs land transfers, the DNRA conducted several environmental and economic impact studies. R. at 8. The Delmont Company's plan would result in the demolition of Red Rock but would limit park-wide destruction with areas of the park five miles from Red Rock still accessible and minimizing impact on local flora and fauna. R. at 8, 48. The area surrounding Red Rock would be accessible again within twenty years. R. at 8. Alternative mining plans may have better potential to salvage Red Rock but would require novel and unknown technologies that will not be available for at least twenty years. R. at 9, 49. Such technologies may require extensive implementation costs, and their ecological and environmental risks remain unknown. R. at 9, 49. After weighing each potential plan, the DNRA decided to move forward with Delmont Mining Company. R. at 9, 49. It concluded a twenty-year wait was impractical, and that the plan it chose would both significantly boost the local economy and align with a nationwide commitment to reducing fossil fuel consumption. R. at 9, 49.

II. Procedural History

In March 2024, Montdel United brought suit against Delmont in the United States District Court for the District of Delmont, Western Division seeking injunctive relief to halt both the land transfer and mining of Red Rock. R. at 1. Montdel United argued the transfer and inevitable mining of Red Rock (authorized by the ECIA) violated both the Free Speech and Free Exercise Clauses of the First Amendment. R. at 1–2. Respondents asserted the land transfer and subsequent

mining of Red Rock did not violate Montdel United's First Amendment Free Speech or Free Exercise rights.[1] R. at 2.

Montdel United sought a temporary restraining order and injunctive relief in the United States District Court for the District of Delmont, Western Division. R. at 10. The District Court concluded Montdel United's claim could succeed on the merits. R. at 32. Respondents appealed to the United States Circuit Court of Appeals for the Fifteenth Circuit, which reversed the judgment of the District Court and denied Montdel United's motion for a preliminary injunction. R. at 45. This Court granted Montdel United's Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifteenth Circuit. R. at 55.

SUMMARY OF THE ARGUMENT

The Court should affirm the Circuit Court's denial of Petitioner's motion for a preliminary injunction. The transfer of Painted Bluffs and Red Rock does not constitute a violation of the First Amendment's Free Speech Clause. Given its characteristics and purpose, Painted Bluffs is categorically a nonpublic forum in which restrictions on speech and expression are only subject to a reasonableness standard. The transfer of Red Rock not only meets the reasonableness standard for a nonpublic forum, but also qualifies as a permissible time, place, and manner speech restriction.

The Circuit Court also correctly found the ECIA and transfer of Red Rock fail to implicate the Free Exercise Clause. Put simply, Respondent's actions do not prohibit religious practice. Respondent's decision to transfer *its own* property does not force the Montdel people to violate their religious beliefs nor choose between the tenets of their religion and a government benefit. Petitioner fails to state a cognizable claim within the Free Exercise Clause's narrow scope.

[1] Respondents voluntarily waived any sovereign immunity claim they may have been entitled to assert in this action. R. at 11.

Assuming, arguendo, that a claim can be made, Respondent's actions still do not mandate strict scrutiny—the law at issue is both neutral and generally applicable. Nor is strict scrutiny permitted, much less required, from the conjunction of the two First Amendment claims.

The law therefore need only be rationally related to a legitimate government interest, which the ECIA clearly is. Even if this Court were to require strict scrutiny, Delmont has a compelling interest in obtaining resources to mitigate the climate crisis and has narrowly tailored the ECIA to achieve this goal. Therefore, the ECIA, transfer of Red Rock, and subsequent mining of Red Rock comports with both the Free Speech and Free Exercise Clauses of the First Amendment. This Court should affirm.

ARGUMENT

I. PAINTED BLUFFS IS A NONPUBLIC FORUM AND THE LAND TRANSFER DOES NOT VIOLATE THE FREE SPEECH CLAUSE.

The Free Speech Clause of the First Amendment, made applicable to states through the Fourteenth Amendment, provides "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. When determining the appropriate level of scrutiny for restrictions on First Amendment Free Speech, courts must first determine the type of forum. *See Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 800 (1985). Each forum can be described as either a traditional public forum, a designated public forum, or a nonpublic forum. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45–46 (1983). Traditional public forums are areas "historically associated with free exercise of expressive activities." *United States v. Grace*, 461 U.S. 171, 177 (1983). Traditional public fora are often streets, sidewalks, and throughways which "have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 516 (1939). Areas which have not been used for these purposes are considered nonpublic forums unless they have been made a public forum by government action. *See Perry Educ. Ass'n*, 460

U.S. at 46; *see also Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 683 (1992), (hereinafter *ISKCON*) (airport qualified as nonpublic forum). The classification of a forum dictates the level of judicial scrutiny. Public and designated public fora are subject to heightened scrutiny, while nonpublic fora are evaluated on a lower standard of reasonableness. *See Perry Educ. Ass'n*, 460 U.S. at 45–46.

A. Red Rock's characteristics are unlike those of a traditional public forum.

Determining a forum's status requires a fact-specific inquiry into the "physical characteristics of the property at issue and *the actual public access and uses*." *ISKCON*, 505 U.S. at 698 (Kennedy, J., concurring) (emphasis added). While some types of property are considered "without more" to be public forums, most do not categorically fit that classification. *See First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114, 1127 (10th Cir. 2002) (noting that "not all walkways are traditional public fora"). A property's characteristics, although not decisive, are important in determining its forum status. *ISKCON*, 505 U.S. at 698 (Kennedy, J., concurring); *see also United States v. Kokinda*, 497 U.S. 720, 727 (1990). Property which invites and promotes expression and communication will often be deemed a public forum. *See Grace*, 461 U.S. at 177. Meanwhile, properties such as piers, forests, and fairgrounds are not considered traditional public forums. *See, e.g.*, *Chi. Acorn, SEIU Local No. 880 v. Metro. Pier & Exposition Auth.*, 150 F.3d 695, 699 (7th Cir. 1998) (Chicago's Navy Pier not a public forum); *State v. Ball*, 796 A.2d 542, 552 (Conn. 2002) (state forest a nonpublic forum); *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 655 (1981) (fairgrounds are a limited public forum). These nonpublic forums are found dissimilar to those which have "immemorially been held in trust for the use of the public and . . . have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n*, 460 U.S. at 45 (quoting *Hague*, 307 U.S. at 515).

The physical characteristics of Red Rock are not indicative of a place traditionally used for communication or as a "necessary conduit in the daily affairs of [Delmont's] citizens." *Heffron*, 452 U.S. at 652. As established in *Ball*, "state forests and undeveloped state parks are defined by their lack of any facilities for public assembly or interaction." 796 A.2d at 550. Despite Petitioner's insistence that Red Rock is akin to a city park, it actually more closely resembles an *undeveloped* state park, without established facilities for expression and assembly. *See Boardley v. U.S. Dep't of the Interior*, 615 F.3d 508, 515 (D.C. Cir. 2010). Painted Bluffs is a 100-square-mile stretch of forested highlands. R. at 2. In fact, the "challenging geography" of Red Rock kept it from being settled and allowed its untouched beauty to be preserved. R. at 4. Delmont acquired Painted Bluffs in order to maintain its natural beauty, not to promote expression. *See* R. at 4; *cf. Leydon v. Town of Greenwich*, 777 A.2d 552, 570–71 (Conn. 2001) (a town beach park with characteristics of a traditional public park is a public forum). The fact individuals have used Red Rock for communication does not negate its characteristics which are not conducive to such activities. *See Ball*, 796 A.2d at 550.

B. The purpose of Red Rock is incongruent with that of a public forum.

The physical characteristics of a property alone do not dictate forum analysis; its purpose must also be considered. *See Kokinda*, 497 U.S. at 727; *Perry Educ. Ass'n*, 460 U.S at 45. Expressive activity must be "historically . . . compatible with, if not virtually inherent in [the space]" to make it a traditional public forum. *First Unitarian Church of Salt Lake City*, 308 F.3d at 1128. Properties such as airports and piers are labeled non-public forums due to their purpose. *See, e.g.*, *ISKCON*, 505 U.S. at 683 (airport is a nonpublic forum); *Chi. Acorn, SEIU Local No. 880*, 150 F.3d at 699 (Chicago Navy Pier's purpose was not to facilitate expression). The primary

purpose of these forums was not a "free exchange of ideas," a cornerstone of public fora. *See Cornelius*, 473 U.S. at 800.

Delmont's purpose in preserving Red Rock was to maintain its undisturbed beauty. R. at 4. This purpose extends past the State's initial seizure of the land in 1930 to 2023, at which point the State decided to repurpose a specific part of the Painted Bluffs for economic activity and environmental measures. R. at 4, 7–9. Red Rock was, and continues to be, a natural formation, not a space dedicated to communicative purposes as a "general pedestrian passage" is. *First Unitarian Church of Salt Lake City*, 308 F.3d at 1128. Allowing expressive activities would interfere with the State's purpose in promoting the economic viability of the surrounding areas, reaching its goal of carbon-neutrality, and adhering to federal mandates. R. at 1. Further, the mineral deposits present at Red Rock are "special attributes" which speak to the government's interest in this forum. *See Heffron*, 452 U.S. at 650–52 (the government's interest in restricting speech "must be assessed in light of the characteristic nature and function of the particular forum involved"). Practice of past rituals and celebrations at Red Rock does not make such activities the principal purpose of the forum. *See Ball*, 796 A.2d at 551–52 (prior use of a state forest for religious rituals does not make a public forum). In fact, the Montdel people's inconsistent use of Red Rock speaks to the secondary nature of these celebrations. R. at 4. It was not until 1952 that the Montdel Observance was formalized. R. at 5. Delmont's decision to allow these observances does not fundamentally change the space's core purpose. *See Ball*, 796 A.2d at 551 (the government's decision to not prohibit certain expressive activity "when they do not interfere with state policies" does not disclose its ability to regulate expression later). Despite incidental expression, the purpose of Red Rock for nearly a century was the preservation of natural beauty.

C. The transfer of Red Rock is a permissible restriction on First Amendment Free Speech rights for a nonpublic forum.

In a nonpublic forum, the government may restrict expression and speech in a manner deemed "reasonable." *See Kokinda*, 497 U.S. at 727 ("[R]egulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness."). The restriction need not be the most reasonable nor least restrictive option so long as it is neutral regarding content and viewpoint. *See Cornelius*, 473 U.S. at 806; *see also Boardman v. Inslee*, 978 F.3d 1092, 1113 (9th Cir. 2020) (a regulation is neutral when it serves a purpose unrelated to the content or viewpoint of the expression, even if some groups are affected more than others). This lower standard is attributable to a nonpublic forum's incongruence with speech and the government's ability as a property owner "to preserve the property under its control for the use to which it is lawfully dedicated." *Adderley v. Florida*, 385 U.S. 39, 47 (1966).

Despite Red Rock being open to the public, the government continues to act as a private owner, with the ability to close or transform the forum. *See Grace*, 461 U.S. at 177. The closure of Red Rock to expressive activity is both content and viewpoint neutral. The decision to sell Red Rock was not in response to a particular type of expressive activity; it was made pursuant to the ECIA's authority and mission. R. at 7. Red Rock will be closed to all expressive activity. R. at 8. There is no substantial evidence to support an assertion that the closure is in response to Montdel Observance practices. Any anecdotal statements by singular individuals do not undermine the State's interest in transferring Red Rock for mining purposes. R. at 41. Rather, Delmont saw potential in the area's mineral deposits and chose to take advantage of the opportunity by following through on ECIA goals. R. at 46–47; *see also Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771 (1976) (a restriction is neutral when it could be "justified without reference to the content of the regulated speech"). Not only was this sale in furtherance of Delmont's environmental interests, but it was also made pursuant to economic

goals. R. at 47. It is for this reason that surrounding communities supported the land transfer. R. at 47. Despite the impact on speech and expression, Delmont is not required to find a solution that is the "most reasonable or the only reasonable limitation" to access. *Cornelius*, 473 U.S. at 806. Red Rock's transformation into a mine was reasonable considering this lowered standard of scrutiny.

D. The transfer of Red Rock is permissible time, place or manner restriction in a public forum.

Assuming, arguendo, that this Court deems Painted Bluffs a public forum, Petitioner's claim still fails because the State's incidental effect on free expression is a permissible time, place, or manner restriction. Such restrictions must be "content-neutral, [be] narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication" to survive strict scrutiny. *Perry Educ. Ass'n*, 460 U.S at 45. As established under the reasonable standard, discussed *supra*, at 9–11, the transfer of Red Rock is both content and viewpoint neutral.

To survive a strict scrutiny analysis, a restriction on speech and expression must be limited to a compelling state interest. *Perry Educ. Ass'n*, 460 U.S at 45. Sweeping restrictions are likely to be found unconstitutional; however, the government's action "need not be the least restrictive means of furthering [the government's] interests." *United States v. Baugh*, 187 F.3d 1037, 1043 (9th Cir. 1999). While specific compelling interests depend on a case's unique facts, in general "core [duties] that the government owes its citizens" have been found to be compelling interests. *Menotti v. City of Seattle*, 409 F.3d 1113, 1131 (9th Cir. 2005). The restriction to speech in pursuit of such interests must then be refined as to "[target] and [eliminate] no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

Delmont's decision to restrict the public's access to Red Rock, despite its incidental impact on speech, is sufficiently narrowly tailored to the State's compelling interest in public safety,

health, and prosperity. Red Rock's closure is to protect the public's safety and health both in the short term (from dangerous construction) and in the long-term (from the detrimental health effects of continued fossil fuel reliance). See R. at 8, 41; *see also United States v. Griefen*, 200 F.3d 1256, 1261 (9th Cir. 2000). Delmont's primary purpose in transferring Red Rock is to further the State's mission of pursuing fossil fuel alternatives—including lithium. R. at 6–8, 41. While other areas in the State contain copper, iron, and nickel deposits, Red Rock and its surrounding area is home to the "the largest lithium deposit ever discovered in North America." R. at 7. Such a treasure-trove of mineral rich land is essential to the aggressive action that is needed to fight the detrimental public health effects of global warming. *See, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020) (stemming spread of COVID-19 a compelling government interest); *see also* R. at 49 (noting the "urgency" of reducing reliance on fossil fuels). In sum, Delmont's decision to transfer Red Rock was tied both to its interest in promoting economic activity and to its interest in decreasing reliance on fossil fuels. R. at 7. Each interest is inherently tied to the public's well-being and health.

The Ninth Circuit held that a time-and-space restricted closure, limited in scope to the area and time of risk to the public, is not only "imminently reasonable," but also narrowly tailored. *See Griefen*, 200 F.3d at 1260. The closure of Red Rock is no different. Delmont, in pursuit of a compelling state interest (public health and safety), closed Red Rock to the public until access to that area was deemed safe. R. at 8. While there may be other *possible* alternatives, it is unproven that they would prove to be less restrictive while still achieving Delmont's compelling interest. R. at 8. The existence of alternative means does not necessarily make an action overly broad, as the government's actions "need not be the least restrictive means of furthering [its] interests." *Baugh*, 187 F.3d at 1043. In fact, a "neutral regulation [that] promotes a substantial government interest" more effectively than the government could without that regulation is understood to be sufficiently narrowly tailored. *See United States v. Albertini*, 472 U.S. 675, 689 (1985). Delmont's transfer of

land was tied to the mineral deposits found within Painted Bluffs and Red Rock. R. at 49. Any accompanying restriction on speech is limited to specific areas within the state that possess large mineral deposits. R. at 47. These restrictions are no more than necessary to gain access to minerals for their use as fossil fuels alternatives. R. at 47. The limited nature of the land transfer as well as the efficiency it provides in pursuing the State's compelling interest ensures that it is sufficiently narrowly tailored.

The final consideration in a time, place, and manner restriction is that the government "leave open ample alternative channels of communication." *Perry Educ. Ass'n*, 460 U.S at 45. The requirement for "ample alternatives" is not one which requires a perfect alternative or a vast variety of alternatives. *See City of Renton v. Playtime Theatres*, 475 U.S. 41, 54 (1986). In *Renton*, the Supreme Court found ample alternatives even when Plaintiff claimed that "'practically none' of the undeveloped land" was for sale or lease and there was "no 'commercially viable' . . . site." *Id.* at 53–54. The First Amendment does not require the government to provide exact alternative spaces for expressive activities.

Delmont has not restricted all alternatives of expression for the Montdel people or for the participants of the Montdel Observance. While Red Rock will no longer be accessible, many of the other areas of Painted Bluffs are (or will once again will be) accessible for the Montdel Observance and the accompanying festival. R. at 8. As in *Griefen*, in which ample alternatives were found, here there are other spaces in Painted Bluffs or elsewhere in Delmont where the observance could continue. 200 F.3d at 1261; R. at 8. Arguments that Red Rock is irreplaceable stand on inadequate logical and factual ground. The Montdel Observance was not formalized until 1952. R. at 5. It was only after formalization that the Observance was held annually. R. at 5. Prior to that, numerous interruptions and varied participation plagued the rituals. R. at 4. The transfer of Red Rock does not disclose speech elsewhere in Painted Bluffs, including just five miles away from Red Rock. R. at 8. Despite foreclosing the use of Red Rock for expressive purposes, the

transfer of one-fourth of Painted Bluffs does not prevent the same expressive activities—which once took place at Red Rock—from taking place elsewhere nearby.

II. THE ECIA AND TRANSFER OF RED ROCK DO NOT INTERFERE WITH THE FREE EXERCISE CLAUSE.

The Free Exercise Clause of the First Amendment, made applicable to states through the Fourteenth Amendment, provides "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I; *Cantwell v. State of Connecticut*, 310 U.S. 296, 303–04 (1940). To be afforded protection of the Free Exercise Clause, a belief or practice need not be acceptable, logical, consistent, or comprehensible to others, but must be rooted in religion. *Thomas v. Rev. Bd. of Indiana Emp. Sec. Div.*, 450 U.S. 707, 713–14 (1981). Based on Delmont's recognition and discussion of the Montdel Observance rituals, whether the Montdel Observance warrants protection is not at issue in this case. R. at 4. However, establishing that a belief or practice warrants protection alone is insufficient to demonstrate the Free Exercise Clause applies. *See Thomas*, 450 U.S. at 716–720. To justify a review under heightened scrutiny, a Plaintiff must demonstrate that the government's action interferes with religious practice in a manner proscribed by the constitutional text. *See Sch. Dist. of Abington v. Schempp*, 374 U.S. 203 (1963).

A. The Circuit Court correctly found that Delmont did not violate the Free Exercise Clause under *Lyng*.

The Circuit Court correctly applied *Lyng* to the ECIA and subsequent transfer of Red Rock by the State of Delmont. In *Lyng v. Nw. Indian Cemetery Protective Ass'n*, the government began construction on federal roads, including a 6-mile segment through the Chimney Rock section of Six Rivers National Forest. 485 U.S. 439, 442 (1988). Chimney Rock, much like Red Rock, historically was used for religious purposes by at least one indigenous group, and those religious purposes would be inefficacious if conducted at other sites. *Id.* at 442, 451; R. at 51. The federal government chose the route through Chimney Rock over less destructive alternative routes,

making sure to avoid archeological sites, private land, and unstable soil. *Lyng*, 485 U.S. at 443. Delmont's transfer of Red Rock and subsequent destruction of the land for mining purposes mimics the actions in *Lyng*. Delmont similarly contemplated alternative mining processes but chose to pursue the land transfer because of its low impact on flora and fauna, potential for significant economic stimulation, and the many unknowns of alternative processes. R. at 6, 8–9. And while there was uncertainty over whether the federal government's actions in *Lyng* would virtually destroy the land and the group's ability to practice its religion, the Court found this to be an unimportant factor in its analysis. *Lyng*, 485 U.S. at 449–52 (whether an action is subject to strict scrutiny does not depend upon its incidental effect on spiritual development).

Based on the factual similarities between *Lyng* and this case, *Lyng* is clearly pertinent and controlling. Further, courts across the country have applied *Lyng* in instances similar to the case at hand—a government action regarding the use of federal land that has an incidental or serious impact on the religious practices of an indigenous group. *See, e.g.*, *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1071 (9th Cir. 2008) (applied *Lyng* to government action on government-owned land); *United States v. Means*, 858 F.2d 404, 407 (8th Cir. 1988) (government could deny public land permit to religious group); *Asher v. Clay Cnty. Bd. of Educ.*, 585 F. Supp. 3d 947, 965 (E.D. Ky. 2022) (grave site removal did not violate Free Exercise Clause); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 239 F. Supp. 3d 77, 100 (D.D.C. 2017) (applied *Lyng* in suit regarding construction of a crude oil pipeline running near tribal reservation); *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Dep't of the Interior,* 2013 WL 4500572, *10 (C.D. Cal. Aug. 16, 2023), *affirmed*, 603 F. App'x 651 (9th Cir. 2015) (cutting off access of public trails did not mount to coercion).

Lyng's applicability to the transfer of Red Rock does not rest on whether the ECIA is neutral or generally applicable. *See Apache Stronghold v. United States*, 101 F.4th 1036, 1054 (9th Cir. 2024) (en banc). The Court, in refusing to distinguish *Bowen v. Roy* from *Lyng*, did not consider general applicability to be a critical element in its analysis. *Id.*; *see also Bowen v. Roy*, 476 U.S. 693 (1986). Instead, the Court held that the critical determination is whether or not an action tends to coerce individuals into acting contrary to their religious beliefs. *Lyng*, 485 U.S. at 450. The District Court's attempt to distinguish *Lyng* and its application in *Apache Stronghold* from the case at hand was misguided, and the Circuit Court was correct to reverse. R. at 29.

The Supreme Court in *Lyng* made clear that not all burdens on religion are unconstitutional. 85 U.S. at 450; *see also Roy*, 476 U.S. at 702. The key word of the constitutional text is "prohibit." *Lyng*, 485 U.S. at 450. The Free Exercise Clause is not written "in terms of what the individual can exact from the government" and does not afford an individual the right to dictate Government conduct. *See id.* at 451 (quoting *Sherbert v. Verner*, 374 U.S. 398, 412 (1963) (Douglas, J., concurring)); *see also Roy*, 476 U.S. at 700; *Kocher v. Bickley*, 722 A.2d 756, 759 (Pa. Commw. Ct. 1999) ("[C]laims of religious convictions do not automatically entitle a person to fix unilaterally the conditions and terms of dealings with the government."). In fact, *Lyng* defines "prohibition" relatively narrowly: Plaintiffs' religious exercise is only "prohibited" when they are "coerced by the government's action into violating their religious beliefs" or forced to choose between following the tenets of their religion and receiving a government benefit. *Lyng*, 485 U.S. at 449. Government programs which incidentally make it more difficult to practice certain religions (that is, frustrate religious practice), but which do not coerce individuals into acting contrary to their beliefs, are *not* unconstitutional prohibitions. *Id.* at 451, 456 (noting that the Constitution protects only against laws *prohibiting* free exercise, not those which may frustrate

or inhibit it). As such, they do not require a compelling justification to be enacted. *Id.* While the land transfer may hinder or frustrate religious exercise, it does not prohibit it. Therefore, Delmont's actions are outside the ambit of the Free Exercise Clause.

Along similar lines, the ECIA and the transfer of Red Rock, while incidentally impacting the Montdel people, do not penalize them by withdrawing government benefits. The ECIA does not provide any rights, benefits, or privileges to anyone, nor does it deprive anyone of those rights, benefits, or privileges—typically a requirement in findings of a Free Exercise violation. *See, e.g.*, *Thomas*, 450 U.S. at 717–718 (denial of unemployment compensation benefits violated Free Exercise Clause); *Carson v. Makin*, 596 U.S. 767, 780 (2022) (tuition assistance program requiring schools be secular violated Free Exercise Clause); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462–63 (2017) (policy denying grants to non-secular nonprofit organizations violated Free Exercise Clause); *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 478 (2020) (state scholarship program excluding non-secular schools violated Free Exercise Clause). While Delmont consistently recognized Painted Bluffs as an area used by the Montdel people, granting them the right to dictate its use would impermissibly sacralize it. Such religious servitude was a specific concern the Supreme Court sought to avoid in *Lyng*. 485 U.S. at 452–53; *see also Apache Stronghold*, 101 F.4th at 1051–52 (de facto beneficial ownership of public property impermissible); *Lockhart v. Kenops*, 927 F.2d 1028, 1036 (8th Cir. 1991) (limiting government's "use of its own land to avoid disrupting religious ceremonies would impose religious servitude on the property and subsidize the religion in question"). Whatever rights the Montdel people *do* have to use the area does not divest the government of *its* right to use its own land as it sees fit. *Lyng*, 485 U.S. at 449–53; *see also Lockhart*, 927 F.2d at 1036 (First Amendment does not require governments to conduct land exchange in a manner that comports with citizens'

religion); *Means*, 858 F.2d at 407 ("Courts consistently have refused to disturb governmental land management decisions that have been challenged by Native Americans on Free Exercise grounds.").

Moreover, the transfer and destruction of Red Rock does not prohibit the Montdel people from practicing their religion, as it has "no tendency to coerce [the Montdel people] into acting contrary to their religious beliefs." *Lyng*, 485 U.S. at 451; *see also Navajo Nation*, 535 F.3d at 1070 (not coerced to act contrary to their religion under threat of civil or criminal sanctions). Appellants will likely argue that the complete destruction of Red Rock will force the Montdel people to conduct individual prayer—a practice forbidden by their religion. Even so, without threat of penalty, the virtual destruction of Red Rock is not coercive. *See, e.g.*, *Lyng*, 485 U.S. at 453 (virtual destruction not coercive unless actively prohibiting with threat of penalties). Additionally, the land transfer and subsequent destruction of Red Rock do not forbid group prayer at other sites: The Montdel people may still exercise their religion in a permissible way without any threat of penalty. It is evident under *Lyng* and its progeny that the actions here do not constitute a prohibition of free exercise as stated in the First Amendment and therefore do not require a compelling interest.

B. The ECIA and transfer of Red Rock do not interfere with the Free Exercise Clause under *Smith*.

Even absent *Lyng*, the government's actions, while incidentally burdening the Montdel people, still avoid strict scrutiny because the ECIA is both neutral and generally applicable.[2] *See Emp. Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878–882 (1990) (incidental

[2] The Religious Freedom Restoration Act ("RFRA"), which requires strict scrutiny analysis for Free Exercise claims, was ruled unconstitutional as applied to states in *Boerne v. Flores*. 521 U.S. 507, 536 (1997). There is no state RFRA in the State of Delmont. R. at 11.

burdens on religious exercise permitted if law is neutral and generally applicable); *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) ("*Smith* held that laws incidentally burdening religion are ordinarily not subject to strict security under the Free Exercise Clause so long as they are neutral and generally applicable."). While individuals are afforded protection for religious free exercise, the First Amendment does not excuse them from complying with an otherwise valid, neutral, and generally applicable law that "proscribes (or prescribes) conduct that [their] religion prescribes (or proscribes)." *Smith*, 595 at 879 (quoting *Reynolds v. United States*, 98 U.S. 145, 167 (1878)). Only if a law is either not neutral or not generally applicable does strict scrutiny apply, which would require the statute to "advance 'interests of the highest order'" and be "narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc. v. City of Hilaleah*, 508 U.S. 520, 546 (1993).

A law is not neutral when its object is to "infringe upon or restrict practices because of their religious motivation," or when the government proceeds in a manner intolerant of religious beliefs/practices. *Id.* at 533; *Fulton*, 593 U.S. at 533. To determine the object of a law, courts must first look to the text to assess whether it discriminates on its face. *Lukumi*, 508 U.S. at 533; *see also Locke v. Davey*, 540 U.S. 712, 720–721 (2004) (state-issued scholarship prohibiting theology major was neutral). Enacted in 2022, the ECIA requires independent appraisal, environmental impact studies, and economic development studies. R. at 6, 47. Notably, it lacks any reference to the Montdel people or any other religious practice. R. at 6, 47.

A court must also search for implicit statutory discrimination, which requires a more searching inquiry into both direct and circumstantial evidence. *See Lukumi*, 508 U.S. at 540. Here, the wealth of supporting documentation in the Record makes clear that no such discrimination is present. The ECIA and Red Rock transfer lack any government hostility or religious

gerrymandering. The Secretary of the DNRA attests that the ECIA was enacted to promote mining, decrease dependency on fossil fuels, and boost the state's economy. R. at 47. *Compare Roake v. Brumley*, 2024 WL 4746342, *45–46 (M.D. La. Nov. 12, 2024) (statements by primary author and sponsor of bill during debate demonstrated overtly religious purpose) *with Chiles v. Salazar*, 116 F.4th 1178, 1205–06 (10th Cir. 2024) (statements by sponsor of bill demonstrated scientific and neutral purpose). The ECIA and transfer of Red Rock were also motivated by the Federal Natural Resources Defense Act ("FRNDA"), which mandated the use of sustainable energy resources to mitigate fossil fuel extraction. R. at 7. The geological, environmental, and economic studies clearly illustrate that the transfer of Red Rock aligns with the purpose of the ECIA: to enhance Delmont's economy by mining lithium—a critical component of renewable resources—in the least environmentally invasive manner. R. at 7–9, 47–49.

Additionally, there is no evidence of hostility to suggest the ECIA and Red Rock transfer was done because of, not merely despite, the religious practices of the Montdel people. *See Pers. Admin'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979) (discriminatory actions done "'because of, not merely 'in spite of'" adverse effect on religious groups). While the Governor of Delmont expressed frustration with the festivals occurring at Red Rock, these statements were not about the Montdel people, the Old Observers, or the Montdel Observance group; they never participated in the festivals. R. at 6, 47. And, unlike *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, these statements were made only by the Governor, who is not a member of the DNRA and therefore has no decision-making power over the land transfer. 584 U.S. 617, 636 (2018) (commission charged with neutral enforcement of antidiscrimination law made hostile statements about religious practices); *see also Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 691 (9th 2023) (statements by members of recommendation

committee). Lastly, and most importantly, these statements do not rise to the level of hostility required by courts around the country to find a violation of the Free Exercise Clause. *See, e.g.*, *Masterpiece Cakeshop*, 584 U.S. at 635 (statements referring to religion as a despicable justification for the holocaust and slavery was impermissible); *Lukumi*, 508 U.S. at 542 (statements that religious practices by Santeria group were an abomination, sin, and abhorrent was unconstitutionally hostile); *Fellowship of Christian Athletes*, 82 F.4th at 692 (statements referring to religious group as "bullshit," "perpetuat[ing] ignorance," and "choos[ing] darkness" were unconstitutionally hostile); *Bais Brucha Inc. v. Township of Toms River, New Jersey*, 2024 WL 863698, *11 (D.N.J. Feb. 29, 2024) (antisemitic comments referring to Orthodox Jewish community as "an invasion" not permitted). Therefore, the ECIA and the subsequent transfer of Red Rock is neutral and does not require demonstration of a compelling interest.

The ECIA and the transfer of Red Rock is generally applicable because it does not selectively impose burdens on conduct motivated by religious beliefs. *See Lukumi*, 508 U.S. at 543. The test for general applicability is not about application to one piece of land; it is about whether the land exchange *only* burdens conduct motivated by religious beliefs. *See Stormans, Inc. v. Weisman*, 784 F.3d 1064, 1079 (9th Cir. 2015) ("A law is not generally applicable if it "in a selective manner[] imposes burdens only on conduct motivated by religious belief'") (quoting *Lukumi*, 508 U.S. at 543); *Smith*, 494 U.S. at 874 (law was generally applicable despite applying only to one type of conduct). This land transfer clearly does not burden solely Montdel religious practices; it will prevent all "those who currently participate in the equinox festivals" from visiting the site, including college students and tourists. R. at 5, 8. Therefore, the land transfer and subsequent destruction of Red Rock is generally applicable.

A law is also generally applicable if it does not consider "particular reasons for a person's conduct by providing" individualized exemptions. *See Smith*, 494 U.S. at 884; *Roy*, 476 U.S. at 708; *Fulton*, 593 U.S. at 533. If a state preserves the ability to deny or grant exemptions on a case-by-case basis, there must be a compelling reason to exclude "religious hardship" as a permissible exemption. *Id.* Here, the ECIA does not provide any individualized exemptions for proposed land transfers. The ECIA requires each proposed land transfer include an economic and environmental impact study without exception. R. at 6. The DNRA retains discretion to determine whether or not to exempt land transfers based on study results, but such exemptions are objective and generalized. *See Does 1-6 v. Mills*, 16 F.4th 20, 30 (1st Cir. 2021) (generalized and objective medical exemption to vaccine requirement still generally applicable). These potential exemptions are unlike the "good cause" exemption in *Sherbert*, 374 U.S. at 406, or the extensive, specific, and targeted list of exemptions in *Lukumi*, 508 U.S. at 535–38, that gave rise to a Free Exercise Clause violation. Additionally, courts have rejected the argument that land use regulations with secular exemptions automatically require religious exemptions. *See Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 651 (10th Cir. 2006) ("[T]he Sixth, Seventh, Eight, and Eleventh Circuits have rejected a per se approach. . . .").

Lastly, a generally applicable law may not prohibit religious conduct while allowing secular conduct which subverts the government's interests. *Fulton*, 593 U.S. at 533; *Lukumi*, 508 U.S. at 543. While Delmont did withdraw from other land transfer agreements, such withdrawals were done for good reason and in accordance with its own interests. R. at 9–10. Delmont withdrew from a land transfer agreement with Granite International after the environmental impact study revealed the extraction process would destroy the habitat of endangered species. R. at 9–10. The land transfer with McBride Brine Mining Inc. was withdrawn after the environmental impact

study revealed a high risk of water contamination. R. at 10. Additionally, the economic impact studies demonstrated both regions of land did not have significant lithium deposits, nor would they have a significant economic impact. R. at 10. The environmental and economic studies in both exchanges clearly showed that proceeding with the land transfers would run counter to the government's goals. Additionally, Delmont has shown independence from secular group influence: it followed through with land transfers in the face of secular group opposition. R. at 10. The ECIA and the Red Rock transfer are generally applicable and do not require a compelling interest.

C. These claims do not compel heightened scrutiny simply because they were brought conjunctively.

When claims deal with a combination of Free Exercise, Free Speech, or Freedom of Assembly rights, plaintiffs sometimes argue that heightened scrutiny is required. *See, e.g.*, *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 430 (6th Cir. 2002); *C.L. for Urban Believers v. City of Chicago*, 342 F.3d 752, 764–65 (7th Cir. 2003); *Swanson by & through Swanson v. Guthrie Indep. Sc. Dist. No. I-L*, 135 F.3d 694, 701 (10th Cir. 1998). This "hybrid rights" argument derives from *Smith*, which indicated that neutral and generally applicable laws may still be subject to strict scrutiny when they implicate multiple constitutional provisions. 494 U.S. at 881. But this argument does not stand on solid jurisprudential ground. As several Circuit Courts have noted, this language from *Smith* is nonbinding dicta. *See Kissinger v. Bd. of Trs. of Ohio State Univ., Coll. of Veterinary Med.*, 5 F.3d 177, 180 (6th Cir. 1993); *Resurrection School v. Hertel*, 11 F.4th 437, 460 (6th Cir. 2021); *Leebaert v. Harrington*, 332 F.3d 134, 143–44 (2d Cir. 2003); *Knight v. Connecticut Dep't of Pub. Health*, 275 F.3d 156, 167 (2d Cir. 2001). Other Circuits outright reject or avoid the hybrid rights claim theory. *See Parents for Privacy v. Barr*, 949 F.3d 1210, 1237–38 (9th Cir. 2020) (avoided hybrid rights ruling); *King v. Governor of the State of New Jersey*, 767 F.3d 216, 243 (3d Cir. 2014) (refused to endorse the hybrid rights theory). Perhaps most

importantly, this "hybrid rights" theory contains little logical support. *See Lukumi*, 508 U.S. at 567 (Souter, J., concurring) (the hybrid rights exception is untenable and would swallow the rule of *Smith*). This Court has never permitted heightened scrutiny merely because plaintiffs brought an additional constitutional claim in conjunction with a Free Exercise claim. It should decline once again to do so here.

D. The ECIA and transfer of Red Rock is narrowly tailored to achieve a compelling government interest.

Laws and actions which demonstrate a compelling interest and are narrowly tailored to achieve that interest survive strict scrutiny analysis. *Lukumi*, 508 U.S. at 546. In the context of Free Exercise claims, there must be a compelling interest in the alleged denial of the right to exercise religion rather than a general compelling interest in the policy/statute. *Fulton*, 593 U.S. at 541. The compelling state interest of the ECIA and transfer of Red Rock, as the District Court pointed out, is clear: the climate crisis created by fossil fuel emissions and the use of sustainable energy. R. at 30. As discussed *supra*, the transfer of Red Rock and subsequent mining of lithium is critical to curtailing the climate crisis. *Supra*, at 12–13. Similar to COVID-19, while small actions may not have large impacts in a vacuum, taken together they have severe consequences. *See Roman Cath. Diocese of Brooklyn*, 592 U.S. at 18 (stemming spread of COVID-19 was "unquestionably a compelling interest"); *Does 1-6*, 16 F.4th at 32 (protecting public health constituted a compelling interest); *Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 635 (2d Cir. 2020) (curbing impact of global pandemic was a compelling interest). Therefore, while the transfer places incidental burdens on the Montdel people, it was motivated primarily by legitimate and compelling reasons.

A law is narrowly tailored when less restrictive or alternatives measures were considered but could not address the compelling interest. *See Lukumi*, 508 U.S. at 546; *Tandon v. Newsom*,

593 U.S. 61, 63 (2021); *McCullen v. Coakley*, 573 U.S. 464, 494 (2014). The DNRA considered alternative mining methods and land transfer agreements which could significantly alter Red Rock rather than destroy it. R. at 49. However, these less intrusive methods would not be feasible for at least another twenty years and would not address Delmont's compelling interests of economic development and climate change mitigation. R. at 30, 49. Further, denying any transfer of Red Rock for mining purposes, which would result in zero disruption to the Montdel people, would be even further from advancing the government's compelling interest, as no lithium would ever be extracted for renewable energy usage. Therefore, the ECIA and the transfer of Red Rock is narrowly tailored to achieve Delmont's compelling interests. The law must be upheld even under the most exacting standard of judicial review.

CONCLUSION

For the foregoing reasons, Respondents did not place an unconstitutional burden on Petitioner's First Amendment Free Speech and Free Exercise rights. As such, Respondent respectfully asks this Court to affirm the Fifteenth Circuit's decision in favor of Respondent.

Respectfully submitted,
/s/ Team 28
Team 28
Counsel for Respondent
Dated: January 31, 2025

APPENDIX

Constitutional Provisions

U.S. Const. Amend. I.

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

Statutory Provisions

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . .

CERTIFICATE

Team 28 hereby certifies that:

1. The work product contained in this brief is our work only;
2. In preparing this brief, we have complied fully with our law school's honor code;
3. And in preparing this brief we have complied fully with the Rules of Competition.

Team 28
Team 28
Dated: January 31, 2025