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 to the United States Court of Appeals for the Fifteenth Circuit

BRIEF FOR THE PETITIONER

Team No. 031
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the ECIA and the subsequent transfer of Red Rock violate the First Amendment Free Exercise rights of Montdel United when the transfer was selectively restrictive, not narrowly tailored, and renders impossible the Montdel people's ability to practice religion by severing their connection with their deity.
2. Whether the ECIA and the subsequent transfer of Red Rock violate the First Amendment Free Speech rights of Montdel United by eliminating their sole venue, a traditional public forum, for expressing their religious views despite the availability of less restrictive alternatives to achieve the government's objectives.

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The district court's decision is unpublished and may be found at *Montdel United v. The State of Delmont and Delmont Natural Resources Agency*, No. 24-CV-1982 (W.D. Delmont 2024). (R. at 1–32). The Fifteenth Circuit's decision is unpublished and may be found at *Montdel United v. The State of Delmont and Delmont Natural Resources Agency*, No. 24-CV-1982 (15th Cir. 2024). (R. at 33–45).

JURISDICTIONAL STATEMENT

1. **Federal District Court Jurisdiction.** Petitioner-Appellant Montdel United initiated this action against Respondents-Appellees State of Delmont ("Delmont") and the Delmont Natural Resources Agency ("DNRA") in the United States District Court for the District of Delmont, Western Division. (R. at 1). Montdel United's complaint seeks injunctive relief to prevent the transfer of Painted Bluffs State Park. (R. at 1). This District Court has jurisdiction under 28 U.S.C. § 1331 because the action arises under the First Amendment to the United States Constitution. 28 U.S.C. § 1331.
2. **Court of Appeals Jurisdiction.** Delmont appealed the final judgment to the Court of Appeals for the Fifteenth Circuit. This Court has jurisdiction under 28 U.S.C. § 1292(a)(1), which permits appeals from interlocutory orders granting or denying injunctions. 28 U.S.C. § 1292(a)(1).
3. **The United States Supreme Court Jurisdiction.** Delmont appeals a final judgment entered by the United States Court of Appeals for the Fifteenth Circuit. The Court of Appeals reversed the district court's decision to grant a preliminary injunction. The Court has proper jurisdiction after it granted a petition for writ of certiorari. 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

A. Facts

The Montdel people are an Indigenous Native American community who have inhabited the State of Delmont since 400 A.D. (R. at 2). Montdel elders trace their religious practices in the area currently known as Painted Bluff State Park back over 1,500 years. (R. at 50).

The State of Delmont was established in the year 1855. (R. at 3). In 1930, Delmont acquired a parcel of land by the power of eminent domain and established Painted Bluffs State Park. (R. at 4). The state sought to preserve the area's natural beauty while offering camping, hiking, and fishing opportunities to the public. (R. at 4). Upon opening the park, the sitting governor of Delmont enshrined the lasting heritage of the Montdel people by executive proclamation, stating the community had been "part of the land for centuries before there was ever a thought of such a thing as Delmont or even America." (R. at 4–5). Since the park's establishment, the Montdel people have performed religious ceremonies in a pro forma manner, independent of the State Park Service. (R. at 4).

Central to the Montdel people's cultural and spiritual identity is religious ritual. (R. at 51). The most important of these rituals takes place at Red Rock, a small semi-circular area atop one of the park's highest bluffs. (R. at 50). The Montdel believe their Creator formed Red Rock for the special purpose of hearing communal supplications during solstices and equinoxes. (R. at 50–51). Since 1950, the ritual has been known as the "Montdel Observance." (R. at 5). In keeping with traditional ritual, the Montdel Observance involves the ten oldest members of the tribe ("Elders") ascending Red Rock and performing crop sacrifices and supplications to the Creator over a twenty-four-hour period. (R. at 5). On the day of each observance, the Elders hear requests from members of the community who wish for divine assistance. (R. at 51). The Montdel religion prohibits individual supplicatory prayer; only the Elders may request divine aid

on behalf of the community, and requests may only occur at Red Rock during solstices and equinoxes. (R. at 51).

Over the years, as publicity of the event has grown, the area surrounding Red Rock during equinoxes became an attraction for curious tourists. (R. at 5). By the turn of the 21st century, hundreds of Montdel and onlookers were gathering beneath Red Rock to watch the ritual. (R. at 52). Seeing the increasing popularity of the practice, the State of Delmont seized on the atmosphere as an opportunity to generate revenue. (R. at 6). The State began highlighting the Montdel Observance in its advertisements for the Park, licensing vendors to sell food, play music, and sell merchandise to tourists. (R. at 6). Today, the activities and events surrounding the Montdel Observance rituals have evolved into a festival-like event. (R. at 5).

In 2016, a group of concerned members from various Native American tribes of Montdel heritage, practitioners of the Montdel religion, and individuals interested in Montdel history formed Montdel United. (R. at 52). The stated goals of Montdel United are to oppose any land transfers of Painted Bluffs and to safeguard Montdel religious sites and ritual practices. (R. at 52). The group explicitly aims to protect Red Rock from development. (R. at 52).

Three years ago, the government of Delmont initiated an agenda to reduce fossil fuel dependency and stimulate the state's economy by mining lithium, nickel, iron, and copper. (R. at 6). The achieve these goals, the government enacted the Energy and Conservation Independence Act (the "ECIA"). (R. at 6). This legislation empowered the state to enter into land transfer agreements with private mining companies for the extraction of minerals. (R. at 6). The transfers are managed by the Delmont Natural Resources Agency.

In January 2023, the DNRA executed an agreement to transfer one-fourth of Painted Bluffs, including Red Rock, to Delmont Mining Company, a private corporation based in

Delmont. (R. at 7). The state proposed three reasons for the transfer: environmental protection, stimulation of the state's economy, and compliance with the Federal Natural Resources Defense Act (the "FNRDA"), a federal mandate. (R. at 22–23). Environmental impact studies conducted by the DNRA indicate that the mining operations will result in the total destruction of Red Rock and its surrounding area. (R. at 8). The Montdel holy site will be replaced by a water-filled quarry, both unrecognizable and too hazardous for visitation. (R. at 8). Equinox festivals along the Delmont River would also be forced to relocate celebrations an additional five miles down the riverbanks. (R. at 8).

Over the past five years, the DNRA has entered into, but subsequently withdrawn from, land transfer agreements with two mining companies for parcels in Painted Bluffs. (R. at 9). The first agreement was ultimately canceled after an environmental impact study indicated that the mining process would destroy the habitat of two endangered species. (R. at 9–10). The second agreement was withdrawn when another environmental impact study suggested that there was a thirty-five percent risk of water contamination affecting a nearby town with a population of fifty. (R. at 10). After the two failed agreements, the DNRA approved the land transfer of Red Rock, citing the state's commitment to reducing fossil fuel use and the potential for an economic boost to the area. (R. at 9).

B. Procedural History

After the DNRA announced its decision to approve the land transfer, Montdel United filed a complaint against the State of Delmont and the DNRA in the United States District Court for the District of Delmont, Western Division. (R. at 34). Montdel United also sought a temporary restraining order and injunctive relief blocking the transfer of Red Rock. (R. at 10). The temporary restraining order was denied, but the district court granted a preliminary

injunction in favor of Montdel United. (R. at 32). Delmont and the DNRA raised an interlocutory appeal challenging the grant of a preliminary injunction in the United States Court of Appeals for the Fifteenth Circuit. (R. at 33). The appellate court reversed the judgment of the lower court, holding that the district court erred in granting the preliminary injunction and that Montdel United cannot state a cognizable First Amendment claim. (R. at 45). Montdel United then successfully petitioned this Court for a writ of certiorari to review the judgment of the Fifteenth Circuit. (R. at 54).

SUMMARY OF THE ARGUMENT

The ECIA and the subsequent sale of Red Rock infringe upon Montdel United's First Amendment right to free exercise of religion. The First Amendment prevents a state from prohibiting the free exercise of religion by protecting not only spoken expression of religious beliefs, but also performative acts such as religious practices and rituals. The Montdel Observance at Red Rock, a supplicatory prayer ritual for the express purpose of maintaining access to their Creator, is a religious practice safeguarded by the Free Exercise Clause.

A law that is not neutral in its posture towards a religious practice and not generally applicable in its burden on religious and nonreligious conduct is subject to strict scrutiny analysis. Here, government officials responsible for the land agreement have demonstrated at least a subtle departure from neutrality through negative comments about the Montdel Observance. Further, the DNRA selectively imposes the burden of destructive mining practices only onto the Montdel people while protecting nonreligious interests. As such, the ECIA and transfer are not neutral nor generally applicable, subjecting the transfer to strict scrutiny.

A government policy can survive strict scrutiny only if it advances interests of the highest order that are narrowly tailored. Delmont's interests in combatting climate change and boosting

their economy, though compelling, are not narrowly tailored. Delmont fails to demonstrate how a single mining project would be decisive in winding back the effects of climate change and providing an economic benefit in a way that other plans would not. Moreover, climate and the economy are not interests of the highest order when they come at the devastating expense to another vital interest, the free exercise of religion. Lastly, since the mining of Red Rock would completely demolish the Montdel people's connection with their God, Delmont indirectly coerces the Montdel into religious servitude in a manner that unconstitutionally prohibits their exercise of religion.

Additionally, the ECIA and the subsequent sale of Red Rock infringe upon Montdel United's First Amendment right to free speech by improperly restricting their ability to engage in expressive conduct. Red Rock, a sacred site for the Montdel for centuries, is a part of Painted Bluffs State Park, a location historically open to the public and used for expressive activities.

Traditional public forums, such as parks and streets, have historically been spaces for free expression and public discourse, and the government's ability to restrict speech in these areas is limited. Red Rock has long been used by the Montdel people for religious prayer rituals, a tradition that has long been central to their culture. As the site of significant religious expression, Red Rock is an important part of the state park and should thus be considered a traditional public forum. Despite Delmont's assertion that Red Rock is a "remote wilderness area," it has been regularly accessed for expressive purposes. This long-standing use and connection to public speech underscores the park's status as a traditional public forum, entitled to full First Amendment protections.

Because the sale of Red Rock imposes a place restriction on the Montdel religious expression in a traditional public forum, it is subject to the "time, place, and manner" test. To

pass the test, the restriction must be content-neutral, pass intermediate scrutiny, and leave open ample alternative channels for expression. While content-neutral, the restriction fails intermediate scrutiny because it is not narrowly tailored to serve the government's interests and does not leave open ample alternative channels. The state's proposed interests—fighting climate change, increasing economic prosperity, and complying with a federal mandate—are not sufficiently narrowly tailored, especially considering the consequences of the sale. Finally, the closure of Red Rock eliminates the only venue for the Montdel people's traditional religious practices, leaving no viable alternative for their expression. Therefore, the sale of Red Rock imposes an unconstitutional restriction on the First Amendment free speech rights of Montdel United. For these reasons, this Court should reverse the Court of Appeals' decision and grant the preliminary injunction to prevent the sale and transfer of Red Rock.

ARGUMENT

I. Standard of Review

The Court reviews the lower court's holding *de novo* because the Fifteenth Circuit's final judgment was based on a matter of law. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988). As a decision reviewed *de novo*, this court reviews the question of law anew, independently, and with no deference to the conclusions reached by the lower court. *Monasky v. Taglieri*, 589 U.S. 68, 83 (2020). Moreover, in *de novo* reviews, the appellate court gives a full plenary review of the findings below and is willing to substitute its judgment for that of the lower court. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

II. The ECIA and subsequent transfer of Red Rock violate the free exercise rights of Montdel United because the transfer was not neutral and not generally applicable, fails strict scrutiny, and completely destroys a uniquely sacred religious site.

Religious liberty is indelibly embedded in American history and the U.S. Constitution *Sch. Dist. v. Schempp*, 374 U.S. 203, 212–14 (1963). At its core, the free exercise of religion

stands for the right to believe and profess whatever religious doctrine one desires. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877 (1990). This right, enshrined in the First Amendment, and incorporated to the states through the Fourteenth Amendment, prevents a state from "prohibiting the free exercise" of religion. U.S. CONST. amend. I; *Gitlow v. New York*, 268 U.S. 652, 666 (1925). The protection "requires government respect for, and noninterference with, the religious beliefs and practices of our Nation's people." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005).

This protection for religious liberty is expansive; noninterference with the free exercise of religion goes beyond "the right to harbor religious beliefs inwardly and secretly." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). Instead, the Free Exercise Clause "does perhaps its most important work" by safeguarding the performance of physical acts, such as assembling with others for a worship service. *Id.*; *Smith*, 494 U.S. at 877. The Montdel Observance, a tradition of prayer ritual which has taken place at Red Rock for centuries, is an example of worshippers "liv[ing] out their faith" in the purest sense. *Kennedy*, 597 U.S. at 524. In gathering for a ritual involving crop sacrifices and other ceremonial supplications carried out by Elders, for the express purpose of maintaining access to their Creator, the Montdel people engage in precisely the "acts or abstentions. . .for religious reasons" conceptualized by *Smith*. *Smith*, 494 U.S. at 877; (R. at 2).

A free exercise claim in the land use context addresses whether the government's application of a land use regulation unconstitutionally burdens or discriminates against religious exercise. *Canaan Christian Church v. Montgomery Cnty., Maryland*, 29 F.4th 182, 198 (4th Cir. 2022). Supreme Court cases establish the general proposition that a law that is "neutral and of general applicability" need not be justified by a compelling governmental interest even if the law

has the incidental effect of burdening a particular religious practice. *Smith*, 494 U.S. at 879. A law failing to satisfy the requirements of neutrality and general applicability must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520, 531–32 (1993).

A. The ECIA and land transfer of Red Rock were not neutral when Delmont officials had expressed hostility toward the Montdel Observance and not generally applicable when the state selectively imposed burdens on the Montdel.

The government fails to act neutrally when it proceeds in a manner hostile towards certain religious beliefs or restricts practices because of their religious nature. *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 638 (2018); *Lukumi*, 508 U.S. at 533. A government policy is also not neutral if it evinces "intoleran[ce] of religious beliefs." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). Factors relevant to the assessment of governmental neutrality include "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and. . . contemporaneous statements made by members of the decisionmaking body." *Lukumi*, 508 U.S. at 540. Further, burden on the government to remain neutral is significant; the Free Exercise Clause bars even "'subtle departures from neutrality'" on matters of religion. *Id*. at 534.

Here, the State of Delmont's land transfer of Red Rock is not neutral when officials and decisionmakers responsible for the agreement have demonstrated a negative view of the Montdel Observance in comments. The governor of Delmont unequivocally expressed his lack of concern about the disruption to the Montdel Observance describing it as a "nuisance" and expressing his "frustration" with associated park maintenance after rituals. (R. at 47). DNRA Secretary Greenfield described the ancient rituals of the Montdel community as an obstacle that had been "tolerated" prior to approval of the transfer (R. at 53). Accordingly, regardless of any support or

cooperation given by state actors through the 20th century, the current administration's conduct toward the Montdel community can, at minimum, be described as a "subtle departure from neutrality." *Lukumi*, 508 U.S. at 534. (R. at 52).

Even if a government policy is neutral, it must also be generally applicable to avoid strict scrutiny. *Spivack v. City of Philadelphia*, 109 F.4th 158, 171 (3d Cir. 2024). As such, even if this Court should find that the governor's conduct and speech does not depart from neutrality, the State of Delmont's land transfer was not generally applicable.

A policy is not generally applicable if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 533–34 (cleaned up). Further, the Free Exercise Clause "protect[s] religious observers against unequal treatment," and inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued only against conduct with a religious motivation. *Lukumi*, 508 U.S. at 542–43 (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 148 (1987) (STEVENS, J., concurring in judgment)). Thus, general applicability establishes the principle that government, "even in pursuit of legitimate interests, cannot in a *selective manner* impose burdens only on conduct motivated by religious belief." *Lukumi*, 508 U.S. at 543 (emphasis added).

In *Lukumi*, congregants from a religious sect that practiced ritual animal sacrifice filed an action alleging that a city ordinance banning the religious practice violated their rights under the Free Exercise Clause. *Id*. at 528. The Court found that the ordinance did not meet the *Smith* general applicability requirement when it was highly underinclusive in its failure to regulate nonreligious conduct as well; killing animals for various nonreligious reasons was either not prohibited or expressly legal. *Id*. at 543–44.

Analogously, the State of Delmont's land transfer and the ECIA are not generally applicable when they cherry-pick nonreligious conduct as meritorious to cancel similar land transfers but selectively disregard the burden on the Montdel community. Over the past five years since the enactment of the ECIA, the DNRA entered into, but subsequently withdrew from, land agreements with two mining companies. (R. at 9). The first transfer was canceled after an environmental impact study revealed that the extraction process of nickel from the Delmont Mountains would destroy the habitat of two endangered species. (R. at 9–10). The second transfer was canceled when an environmental impact study indicated an approximately thirty-five percent risk of water contamination affecting an aquifer for a nearby town with a population of fifty people. (R. at 10). Finally, the state approved the land transfer in part due to an economic impact study that revealed the mining operations would provide a "substantial economic boost to the local economy." (R. at 9).

At bottom, the efforts to protect wildlife, fifty people from the possibility of water contamination, and economic interests, while simultaneously disregarding a centuries-old religious rite shows precisely the type of inequitable treatment the Free Exercise Clause seeks to protect against. The State of Delmont selectively imposes a burden even more onerous than the ordinances criminalizing the ritual practices in *Lukumi* – far worse than making it illegal, the destruction of Red Rock would make the Montdel Observance a complete impossibility.

The DNRA's selective imposition only onto Montdel observers to bear the impacts of destructive mining practices creates the ultimate religious burden: rendering a practice impossible through the erasure of irreplaceable cultural landmarks. Therefore, even if the land transfer and the ECIA are found to be neutral, the law and transfer are not generally applicable.

B. Under a strict scrutiny analysis, only a state interest of the highest order that is narrowly tailored can justify a discriminatory governmental policy, but no such state interest exists here.

Government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curium). A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests. *Lukumi*, 508 U.S. at 546. Put another way, under strict scrutiny, so long as the government can achieve its interests in a manner that does not burden religion, it must do so. *Fulton*, 593 U.S. at 541.

The State of Delmont asserts that the land transfer of Red Rock serves two compelling interests: mining the lithium in the region could combat climate change by reducing reliance on fossil fuels and mining operations could provide a substantial boost to the local economy. (R. at 9). While these interests might be compelling, the land transfer is not sufficiently narrowly tailored to achieve the state's aims.

When the state articulates their objectives in overly general terms they will not survive strict scrutiny since the First Amendment demands a more precise analysis. *Fulton*, 593 U.S. at 541. Rather than rely on "broadly formulated interests," courts must "scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Id*. (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006)). In the context of combatting climate change, this calls for a determination *not* of whether decreasing fossil fuel emissions is a compelling interest, but rather if mining lithium at Red Rock at the expense of the Montdel Observance is a narrowly tailored means of pursuing that goal. While it might have an impact on combatting global warming, it is highly improbable that a single mining project would

be decisive in winding back the effects of climate change. Likewise, the State of Delmont must demonstrate that the mining operations would specifically and directly lead to an economic boost to the local economy in a way that other plans would not. Under this framing, Delmont cannot prevail. Two other proposed plans would have provided an economic boost to the area, demonstrating alternative options to stimulate the economy. However, both were rejected because they impacted environmentally protected domains.

Rather than precisely tailoring their interests, the State of Delmont "employs a blunt instrument that carries a high cost" laid at the feet of the Montdel community. *Crawford-El v. Britton*, 523 U.S. 574, 595 (1998). As such, the land transfer and ECIA cannot survive strict scrutiny.

Further, even if this Court finds the transfer to be narrowly tailored, the interests at hand fail to meet the demanding highest order threshold, compared to Montdel United's interest. A law cannot be regarded as protecting an interest "of the highest order" when it leaves appreciable damage to a supposedly vital interest unprohibited. *Florida Star v. B.J.F.*, 491 U.S. 524, 541–42 (1989) (SCALIA, J., concurring in part and concurring in judgment). Economic development and the fight against climate change are doubtlessly substantial government interests demanding significant resources and coordination.

However, when measured against the importance of the Montdel community's interest, the two stated concerns hardly meet the religious and cultural gravity of Red Rock. As Respondents readily admit, the destruction of Red Rock and the ripple effects on the Painted Bluffs region will "likely result in fundamental harm to the practice of the Montdel Observance." (R. at 45). Fundamental is an apt description of the harm, but Respondents err in their characterization – disruption to the Montdel Observance is not just a "likely" result should the

transfer proceed. It is an inevitability. Without Red Rock, the central religious landmark for these indigenous people for centuries, the very framework of the Montdel religion will be forever, irreparably harmed. In contrast, the State of Delmont's interests, though noble, could be pursued in countless other arenas and by other means. Through Delmont's inability to demonstrate the immediacy and directness of the environmental and economic impacts of the land transfer, the state fails to bring forth interests of the highest order.

C. Even under a lower level of scrutiny, Delmont's mining operations would completely destroy the only location where supplications may occur, distinguishing these facts from *Lyng v. Northwest Indian Cemetery Protective Ass'n*.

Respondents contend that the land transfer and the ECIA should not be subject to strict scrutiny analysis since there is no "prohibition" of religion by which Montdel United is "coerced by the Government's actions into violating their religious beliefs." *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 449 (1988). In *Lyng*, the United States Forest Service approved a plan to build a road through a six mile segment of Chimney Rock, a forest "historically used for religious purposes" by three indigenous Peoples. *Id.* at 442. An indigenous association challenged the proposed construction alleging an infringement on their free exercise rights, but the court found for the state. *Id*. at 449. Since the plaintiffs were not "coerced" or "penalize[d]" by the Government's action, there was no First Amendment prohibition of religion despite harmful effects on their religious practices. *Id*.

However, despite some similarities, *Lyng* is ultimately distinguishable. First, while the Court acknowledged that the proposed road in *Lyng* would "virtually destroy" the indigenous population's ability to practice their religion, mining Red Rock would *completely* demolish the Montdel people's connection with their God. *Id.* at 451. As such, the extent of the prohibition here goes beyond even the devastating impact on the indigenous communities in *Lyng* – the

Montdel would be completely cut off from their only means of requesting divine aid from their Creator. Further, in *Lyng*, the Native American population attempted to protect an entire forest area while here, the Montdel only wish to protect a small semicircular area on a bluff. (R. at 50). The dramatic difference in scale of the sacred area here, a few dozen square feet, versus a "31,000-acre tract" of land renders *Lyng* distinguishable. *Id.* at 446.

Finally, even if this Court were to apply a lowered level of scrutiny and find this case to be analogous to *Lyng* and *Apache Stronghold*, the facts here implicate the "indirect coercion" conceptualized by those cases. In *Apache Stronghold*, the Ninth Circuit held that the destruction of an Apache religious site located on top of a large copper deposit did not offend the Free Exercise Clause. *Apache Stronghold v. United States*, 101 F.4th 1036, 1044 (9th Cir. 2024). Relying on *Lyng*, the court reasoned that since the government's land use would have "no tendency to coerce" the Apache into "acting contrary to their religious beliefs," their Free Exercise claim must be rejected. *Id.* at 1051–52 (quoting *Lyng*, 485 U.S. at 449–50).

However, both *Lyng* and *Apache Stronghold* acknowledged that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment. *Apache Stronghold*, 101 F.4th at 1051; *Lyng*, 485 U.S. at 450. As articulated by Judge Brennan in his dissent in *Lyng*, "religious freedom is threatened no less by governmental action that makes the practice of one's chosen faith impossible than by governmental programs that pressure one to engage in conduct inconsistent with religious beliefs." *Lyng*, 485 U.S. at 465–66 (BRENNAN, J., dissenting). Here, the destruction of Red Rock might not be directly coercive, but by protecting environmental and economic interests at the expense of the Petitioner's exercise of religion, Delmont indirectly exercises control over the Montdel in a coercive manner.

For the foregoing reasons, this Court should find that Montdel United states a cognizable Free Exercise claim, grant a preliminary injunction, and reverse the judgment of the Fifteenth Circuit.

III. The ECIA and subsequent sale of Red Rock violate Montdel United's First Amendment right to free speech.

The First Amendment's Free Speech Clause applies to the states through the Fourteenth Amendment's Due Process Clause. *Gitlow*, 268 U.S. at 666. The clause requires that "Congress shall make no law. . .abridging the freedom of speech." U.S. CONST. amend. I. To determine whether there has been a First Amendment violation, courts must first determine whether the words or conduct qualify as protected speech. *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 797 (1985). A complete analysis of this prong is unnecessary, as it is well established that the use of government property for religious practices constitutes expressive conduct protected by the First Amendment. *Kennedy*, 597 U.S. at 543. Next, courts must determine whether the forum is of a public or nonpublic nature. *Cornelius*, 437 U.S. at 797. Finally, courts must assess whether the government's justifications for restricting speech satisfy the applicable standard for that forum. *Id*.

A. Red Rock, as part of a state park historically used for religious rituals, constitutes a traditional public forum entitled to full First Amendment protection.

The government's ability to impose restrictions on speech is contingent upon the nature of the forum. *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 44 (1983). The Supreme Court identifies three types of forums to evaluate the constitutionality of government speech regulations: the traditional public forum, the designated public forum, and the nonpublic forum. *Id*. at 45–46. Traditional public forums include properties such as public streets and parks that "have immemorially been held in trust for the use of the public and, time out of mind, have

been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Id*. at 45 (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). Designated public forums are defined as public property intentionally opened by the state "for use by the public as a place for expressive activity." *Id*. at 46. Finally, a nonpublic forum is defined as government property that is neither by tradition nor by designation a forum for public communication. *Id*. at 46. In nonpublic forums, the government has greater flexibility to impose restrictions on speech so long as the restrictions are reasonable and are not intended to suppress expression merely because public officials oppose the speaker's viewpoint. *Id*.

Historically, parks are recognized as traditional public forums. *United States v. Grace*, 461 U.S. 171, 177 (1983). Public parks have long been regarded as protected spaces for speech, even before the development of the three categories of forum analysis used today. *Hague*, 307 U.S. at 515. In municipal parks and other public spaces traditionally tied to expressive activities, the government's authority to restrict conduct is limited. *Grace*, 461 U.S. at 177.

Although the Supreme Court has not yet determined the forum nature of *state* parks, at least one circuit court has offered guidance indicating that state parks are, in fact, traditional public forums. In 1992, the Eleventh Circuit held that MacArthur Beach State Park is a traditional public forum. *Naturist Soc., Inc. v. Fillyaw*, 958 F.2d 1515, 1522 (11th Cir. 1992). The court held that, while the beach alone may not constitute a traditional public forum, it should be treated as one because the state park encompassed areas beyond the beach, such as parking lots, a nature center, and walkways. *Id*. Similarly, Painted Bluffs State Park contains more than just Red Rock, as it also includes campsites, hiking trails, and fishing ponds. (R. at 4). Standing alone Red Rock may not fit the criteria of a traditional public forum, but like in *Fillyaw*, it should be treated as one in conjunction with the entirety of the state park.

In another case, the Eleventh Circuit held that the district court erred in classifying a national park as a nonpublic forum, concluding instead that it should be classified as a traditional public forum. *United States v. Frandsen*, 212 F.3d 1231, 1237 (11th Cir. 2000). State parks and national parks serve similar purposes, both providing spaces for recreation, education, and public expression. Therefore, their expressive and non-expressive functions are indistinguishable. If national and municipal parks are considered traditional public forums, there is no reason that a state park should not be one.

On the other hand, the D.C. Circuit Court has held that national parks and the areas within them are not automatically classified as traditional public forums. *Boardley v. United States Dep't. of Interior*, 615 F.3d 508, 514–15 (D.C. Cir. 2010). What matters is the purpose the forum serves by tradition or designation. *Id*. at 515. The court clarifies that although "many national parks include areas—even large areas, such as a vast wilderness preserve—which never have been dedicated to free expression and public assembly," they must be clearly incompatible with such use to be classified as nonpublic forums. *Id*. Even if this Court finds *Boardlely* to be persuasive, the facts are distinguishable from the one at hand. In contrast, Red Rock is not only compatible with, but necessary for, the Montdel people's religious expression. The Montdel have used this land for religious purposes for centuries and even rely on its natural state to conduct their traditional prayer rituals. Therefore, the reasoning employed in *Boardley* is inapplicable to Red Rock and the entirety of the park should be considered a traditional public forum.

Red Rock, as part of a state park, should automatically be considered a traditional public forum. Typically, "a determination of the nature of the forum would follow automatically from this identification." *Frisby v. Schultz*, 487 U.S. 474, 480 (1988) (explaining that the identification of a "public street" automatically leads to a determination of it as a traditional public forum).

Furthermore, the State "may not by its own *ipse dixit* destroy the public forum status of streets and parks which have historically been public forums." *Grace*, 461 U.S. at 180. Since Painted Bluffs should automatically be considered a traditional public forum because of its identification as a park, so should Red Rock. Red Rock is "a barren area atop one of the park's highest bluffs." (R. at 50). It is not distinct from, but instead a part of, Painted Bluffs. It functions as a natural extension of the park's landscape, reinforcing its status as a traditional public forum. Even though Red Rock is a wilderness area within the park, its location and use are indistinguishable from the broader Painted Bluffs State Park. The state cannot arbitrarily treat it differently to avoid public forum obligations.

However, even if the nature of the forum did not automatically follow, Red Rock still qualifies as a traditional public forum. The Montdel people's 1500-year tradition of supplicatory prayers is deeply tied to their culture and community, and they believe Red Rock to be the sole place where they can connect with their deity. (R. at 17). This tradition of religious expression exemplifies activity that involves "communicating thoughts between citizens and discussing public questions." *Perry*, 460 U.S. at 45. The Seventh Circuit has recognized that prayer and religious expression are part of American public discourse. *DeBoer v. Vill of Oak Park*, 267 U.S. 558, 568 (7th Cir. 2001). The court held that prohibiting a prayer event in a public place discriminated against Americans who use prayer to express their views and therefore violated their First Amendment Free Speech rights. *Id*. Likewise, the Montdel prayer events at Red Rock represent a form of public expression, and the centuries-long tradition of this specific practice at this specific location establishes Red Rock as a traditional public forum.

Respondent asserts that Red Rock is non-public forum. (R. at 40). They argue that Red Rock is not a public park but rather a "remote wilderness area" inside of a park where expressive

activity is limited and sporadic. (R. at 14). They contend that Red Rock is a place that "never [has] been dedicated to free expression and public assembly, would be clearly incompatible with such use, and would therefore be classified as [a] nonpublic [forum]." *Boardley*, 615 F.3d at 515.

It would be foolish to assert that Red Rock is a "remote wilderness area" because Red Rock has been accessed and used for religious purposes for centuries, even before Delmont was a state. (R. at 50). Not only do the Montdel Elders travel to Red Rock itself, but thousands of attendees gather in a nearby area of Painted Bluffs, just one mile away, to participate in equinox festivals. (R. at 15). In fact, the government of Delmont has profited from selling vendors' licenses for these festivals since 1952. (R. at 5–6). The government's tradition of granting licenses for these equinox festivals exposes the inconsistency in its position on the remoteness of the land. If the area were truly remote, the government would not have actively promoted or profited from these festivals. The state of Delmont had no issue with the area's "remoteness" when it was at its peak profitability for them but now claims it is too remote simply because they have found a more lucrative use for the land.

Although the Supreme Court has never directly addressed the level of scrutiny applicable to the sale or transfer of land, the "destruction of public forum status. . .is. . .presumptively impermissible." *Grace*, 461 U.S. at 180. Traditional public forums hold special legal status because they are historically tied to public expression. "The principal difference between traditional and designated public forums is that the government may close a designated public forum whenever it chooses, but it may not close a traditional public forum to expressive activity altogether." *Seattle Mideast Awareness Campaign v. King Cnty.*, 781 F.3d 489, 496 (9th Cir. 2015). Allowing a traditional public forum to be closed with only minimal scrutiny would effectively erase their unique legal status. To preserve legal protections for traditional public

forums, reasonable time, place, and manner restrictions are allowed, but these restrictions must be content-neutral, narrowly tailored to serve a significant governmental interest, and must leave open ample alternative channels for communication. *McCullen v. Coakley*, 573 U.S. 464, 477 (2014).

Given that Red Rock is situated within a state park and historically used for religious rituals, it qualifies as a traditional public forum, deserving of the full First Amendment protections afforded to such spaces.

B. The sale of Red Rock is a restriction that fails the time, place, and manner test because it is neither narrowly tailored to advance a significant government interest nor does it leave open ample alternative channels for religious expression.

Because the sale authorized by the DNRA would result in the closure of a traditional public forum, it imposes a restriction on the place where expressive activity can occur and, as such, must pass the "time, place, and manner" test. *See generally Ward v. Rock Against Racism*, 491 U.S. 781 (1989). For a time, place, or manner restriction to be permissible, it must "be without reference to the content of the regulated speech. . .narrowly tailored to serve a significant governmental interest, and. . .leave open ample alternative channels for communication of the information." *Id*. at 791. While the sale of Red Rock is a content-neutral restriction, it fails the remainder of the test because it is not narrowly tailored to serve a significant government interest, and it does not leave open ample alternative channels for expression.

When a regulation is content-neutral, intermediate scrutiny is used to assess the constitutionality of a time, place, or manner restriction. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). Because the sale of Red Rock only "incidentally affects" speech and is "unrelated to the content of the expression," it is considered content-neutral and must be narrowly tailored to serve a significant government interest. *Ward*, 491 U.S. at 791. Under this

intermediate framework, a restriction on speech is constitutional if it promotes a substantial interest that would be less effectively achieved without the regulation. *Id*. at 799. It need not be the least restrictive means of achieving that interest. *Id*. at 798. Under this test, the sale and subsequent closing of Red Rock is not narrowly tailored to serve a significant government interest.

Three potential government interests are provided by the state of Delmont. One interest is the motivation to increase the number of electric-powered automobiles compared to gas-powered ones to help mitigate climate change by reducing reliance on fossil fuels. (R. at 22). Delmont also proposes that the subsequent lithium extraction will economically benefit the state, specifically the impoverished area surrounding Painted Bluffs State Park. *Id*. Finally, the state asserts that the sale is required in order to follow a federal mandate that requires sustainable energy in defense contracts. (R. at 22–23). While all of these interests may be significant to the state, the sale of Red Rock is not a means that is narrowly tailored enough to pass constitutional muster.

If the state was truly concerned about climate change, it would not lean on lithium mining. While electric energy from lithium may increase reliance on electric automobiles, the process of extracting it leads to significant environmental fallout. The DNRA conducted an environmental study that predicted that local fauna and flora will be relatively unimpacted by the mining. (R. at 8). However, the fauna and flora are not the only environmental factors that lithium mining puts at risk. The sulfuric acid and sodium hydroxide used in mining oftentimes permeate the soil and water of the surrounding ecosystems, polluting them. Additionally, the mining process emits excess greenhouse gas into the atmosphere. One ton of mined lithium emits almost fifteen tons of carbon dioxide. Iris Crawford, *How Much CO_2 Is Emitted in*

Manufacturing Batteries?, MIT CLIMATE PORTAL (July 15, 2022), https://climate.mit.edu/ask-mit/how-much-co2-emitted-manufacturing-batteries. The environmental costs of the sale of land make the proposed goal of reducing climate change oxymoronic and unconvincing.

The sale as a means of reaching the economic goal of the government is also an implausible argument. Delmont has been offered at least two other mining deals that it subsequently rejected. These two mining operations were also proposed to be economically prosperous, however, the state rejected them. Furthermore, Red Rock is already profitable for the surrounding counties as the equinox festival increases revenue from tourism. Not only are these festivals a boost in the counties' economies, but the state has also been able to benefit by selling licenses to vendors. The sale of Red Rock would cause a decrease in tourism, an industry that Delmont has historically depended on. By accepting one of the other mining contracts, Delmont could have avoided jeopardizing tourism while still benefiting from additional mining revenue. This approach would allow the state to maintain its economic interests in both tourism and mining, avoiding the need to choose between the two. Therefore, the sale of Red Rock is not only unnecessary to achieve Delmont's economic goals, but it is also shortsighted, undermining the importance of the tourism industry while ignoring alternative opportunities for revenue.

Third, the land transfer is not necessary to comply with federal law as the state suggests. Though there is a mandate that demands sustainable energy in defense production, this sale is not required in order to abide by that demand. If the state was able to reject plans for other mining proposals, nothing requires Delmont to accept this one at Red Rock. There are many alternative avenues that Delmont may take that are just as likely to satisfy the federal mandate. Therefore, none of the three government interests that Delmont suggests satisfy the narrow tailoring requirement for intermediate scrutiny.

The final prong of the time, place, and manner test requires that the government "leave open ample alternative channels for communication of the information." *Ward*, 491 U.S. at 791. The alternatives do not have to be the speaker's preferred or best choice, nor do they have to provide the same audience or impact for the expression. *Ross v. Early*, 746 F.3d 546, 559 (4th Cir. 2014). The regulation must leave open avenues for "the more general dissemination of a message." *Frisby*, 487 U.S. at 483. If the regulation does not "affect the quantity or content of the expression," it is permissible. *Ward*, 491 U.S. at 802. For place restrictions, such as the one in this case, the ample alternative requirement is usually met if there is another location available for the expressive activity. *United States v. Griefen*, 200 F.3d 1256, 1261 (9th Cir. 2000).

However, there is no true alternative for Montdel United's use of Red Rock because it is the only possible forum for their traditional supplicatory prayer. The Southern District of Ohio held that Fountain Square, a central venue for speech in Cincinnati, has a "unique role" in the city. *Chabad of S. Ohio v. City of Cincinnati*, 233 F. Supp 2d 975, 986 (S.D. Ohio 2002). As a result of the special character of this location, the court found that there were no ample alternatives for a Jewish ceremony hosted there. *Id*. Analogously, Red Rock is a unique landmark for the religious expression of the Montdel. Any deviation from their ceremonial practices at Red Rock will incur their Creator's wrath. (R. at 3). If Red Rock is destroyed, there is nowhere else for them to express their religious speech. The closure of this avenue would impermissibly affect the quantity and content of their discourse because they would no longer to be able to communicate it.

The sale of Red Rock fails the time, place, and manner test. It is not narrowly tailored to achieve any of the state's asserted interests, and it disposes of the only forum for religious expression without leaving open ample alternatives. For these reasons, the sale fails to meet the

standards required to restrict speech in traditional public forums, infringing upon Montdel United's constitutional rights.

CONCLUSION

For the foregoing reasons, Montdel United requests that the Court reverse the decision of the Court of Appeals and grant injunctive relief to Petitioner.

APPENDIX A

Constitutional Provisions

U.S. Const. Amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the 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. § 1292(a)(1)

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

> **(1)** Interlocutory orders 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, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

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. § 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 OF COMPLIANCE

In compliance with Rule III(C)(3) for the 2025 Seigenthaler-Sutherland Moot Court Competition, Team 031 hereby certify that:

1) The work product contained in all copies of this team's brief is the work product of the team members only,
2) All members of the team have complied fully with the law school honor code, and
3) We have complied with all rules of the Seigenthaler-Sutherland Cup Moot Court Competition.

By: /s/ Team No. 031

Counsel for Petitioner