

No. 22-CV-7654

In the Supreme Court of the United States

POSTER, INC., RESPONDENT

v.

WILL WALLACE, PETITIONER

ON WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT FOR THE FIFTEENTH CIRCUIT

Case No. 2021-3487

BRIEF FOR THE PETITIONER,

WILL WALLACE

Team 21
Counsel for Petitioner

QUESTIONS PRESENTED

- I. Under the First Amendment, did the United States Court of Appeals for the Fifteenth Circuit erred when it concluded the Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120, is unconstitutional because it violated Poster's free speech rights
- II. Under the First Amendment, does the Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120, violate the Respondent's right to Free Exercise when it requires common carriers to establish an inclusive platform to all regardless of political, ideological, or religious viewpoint?

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OPINIONS BELOW

Below the District Court ruled on summary judgment in favor of Petitioner Will Wallace in case number C.A. No. 21-CV-7855. R. at 1-17. The Court of Appeals for the Fifteenth Circuit reversed the grant of summary judgment in case number 2021-3487. R. at 18-33. This court granted Certiorari on two issues. R. at 39.

STATEMENT OF JURISDICTION

The United States District Court for the District of Delmont had proper federal question jurisdiction under 28 U.S.C § 1331. The appeal to the Fifteenth Circuit was proper under 28 U.S.C. § 1291. This Court granted Certiorari and can decide the case under 28 U.S.C § 1254(1).

STATEMENT OF THE CASE

On June 1, 2020, Delmont passed a statute, Delmont Revised Statute § 9-1.120(a) (“CC Law”), which designates internet platforms as common carriers when they control a substantial market share. R. at 3. Furthermore, the law requires the common carrier to “serve all who seek or maintain an account, regardless of political, ideological, or religious viewpoint.” R. at 3. The final portion of the CC Law requires common carriers to “refrain from using corporate funds to contribute to political, religious, or philanthropic causes.” R. at 3. The law included the “no contribution provision” to avoid the Establishment Clause issues. R. at 20. The CC Law provides for a reasonable fine with a maximum limit of 35 percent of the daily profits of the offending actor. R. at 20. Governor Louis Trapp (“Trapp”) advocated for the CC Law to hold websites accountable. R. at 20. Trapp pursued this legislation to ensure the people of Delmont had an “online space to

be a ‘town square,’” to prevent large technology companies from restricting speech and to prevent technology companies from favoring causes with monetary donations. R. at 34.

Poster, Inc. (“Poster”), An American Peace Church (“APC”) founded self-publication web marketplace, was founded in 1998. R. at 2. Poster’s board members are currently members of the APC and view their position as an extension of religious duty. R. at 37. Poster is domiciled in Delmont and is subject to Delmont’s laws. R. at 2, 19, 24. Poster, a household name, commands 77 percent of the artistic, self-publication market. R. at 2, 10. Poster’s competition offers inferior services to the public and owns 25 percent of the market. R. at 10. The self-publication market Poster operates artists in a centralized location to upload content for a fee or for free. R. at 2, 19. Poster retains APC guidelines of nonaggression, pacifism, and philanthropic endeavors of tithes to educational and cultural development. R. at 2. Currently, 15 percent of Poster’s revenue is tithed to the APC. R. at 2-3. Poster prefers members of the APC by extending discounts to established or new artists who are members of the APC. R. at 3. Poster hosts artists’ art that differs in political or religious views except for artists whose art Poster deems contrary to Poster’s pacifistic views, but these artists do not receive any discounts. R. at 3, 5. Poster expresses the power to accept or reject artist’s materials. R. at 19.

The case at hand evolved from the account of Katherine Thornberry (“Thornberry”), who held an account on poster since November of 2018 until Poster wrongly suspended Thornberry’s account. R. at 3, 5. Thornberry used Poster to self-publish her book *Animal Pharma* (Novel). R. at 3-4. During the Fourth of July weekend, Thornberry attended a three-day rally for animal rights in hopes of ending animal experimentation, and the rally received substantial amounts of media attention. R. at 4. Thornberry posted an update that included a new alternate title to her novel: *Blood is Blood*, to her Poster and her other social media accounts while attending the rally. R. at

4. The phrase “Blood is Blood” is used by an extremist animal rights group that advocates for civic violence to end animal testing and experimentation. R. at 4. The novel received growing interest prior to the rally, but after the rally, the novel gained a small number of sales. R. at 4. Around Thornberry’s update, a protest occurred where public and personal property was damaged, and a police officer lost an eye. R. at 4. The phrase “Blood is Blood” appeared on buildings and was heard as a chant when yelled by protestors. R. at 5. After the event the CEO of Poser joined a newspaper op-ed which condemned the violence. R. at 5.

Poster identified Thornberry’s novel name change by reviewing a standard revenue report, which led Poster, who interpreted the title as over generalized against Poster’s pacifist views, to suspend Thornberry’s account. R. at 5. Prior to the passage of the CC Law, Poster suspended a user’s work entitled *Murder Your Enemies: An Insurrectionist’s Guide to Total War* for failing to meet Poster’s pacifist views. R. at 3 and 5.

Delmont Attorney General Will Wallace (“Wallace”) discovered Poster wrongly suspended Thornberry’s account on August 1, 2020. R. at 6. During a press conference, Wallace confided that Poster discriminated against users over political views, which initiated the CC Law to be activated. R. at 5. Poster filed suit against Delmont on the grounds of violating Poster’s freedom of speech and religion. R. at 6.

The Trial Court and Appeals Court both determined Poster qualified as a common carrier. R. at 8-11, 25-27. The trial court held in favor of Delmont and ruled that Poster’s freedom of speech and freedom of religion were not violated by Delmont. R. at 1-17. The appeals court favored Poster and ruled that CC Law harmed Poster’s freedom of speech and religion. R. at 18-33.

SUMMARY OF THE ARGUMENT

The CC Law does not violate Poster's free speech rights and the Court of Appeals' decision should be reversed. First, the CC Law properly designates Poster as a common carrier. Second, Poster's speech rights are properly limited under the traditional limitations placed on common carriers. Third, intermediate scrutiny should be applied to the CC Law because of its content neutrality and the Court of Appeals erred when equating common carriers with broadcasters. When intermediate scrutiny is applied the law does not go impact speech more than necessary to further the important government interest of access to markets. Finally, if strict scrutiny is applied the state has sufficient interest and the law is narrowly tailored in order to uphold the statute.

This court should reverse the Court of Appeals decision and hold that the CC Law is neutral. The law is neutral on its face, such that there are no anti-religious remarks; rather, it encourages inclusive viewpoints. Furthermore, there are no repeated incidences to demonstrate patterns of animosity targeting a specific group. Therefore, the Court should find the law to be neutral.

This Court should reverse the Court of Appeals because the CC Law is generally applicable. The law does not create any individualized exemptions and treats all common carriers who host a substantial market share as equals. The CC Law dissipates any exemptions by eliminating religious tithes. Thus, the Court should find the law generally applicable.

ARGUMENT

I. THE DELMONT COMMON CARRIER LAW AS APPLIED TO POSTER DOES NOT VIOLATE THE FIRST AMENDMENT.

A. Poster is a common carrier, and its common carrier status properly limits its First Amendment rights.

Governments retain the authority to designate companies with a significant influence as common carriers and limit the rights of these common carriers. Munn v. People of State of Ill., 94 U.S. 113, 132-33 (1876). The District Court and the Court of Appeals recognized that Poster controls 77 percent of the market share in artistic self-publication. R. at 19. Due to this high level of market share and subsequent market control, Delmont chose to use their power to regulate common carriers with enacting the Delmont Revised Statute § 9-1.120(a) (“CC Law”). R. at 20. The CC Law is constitutional because Poster was properly designated as a common carrier and common carriers have limitations placed on them compared to other companies.

1. **The Delmont Statute is the proper usage of Common Carrier Law, and Poster is properly classified as a common carrier.**

Common Carrier Laws exist as a means for the government to regulate companies that have a tremendous impact on society. Munn, 94 U.S. at 130. The common carrier theory, a historical English common law concept, identified some business as holding a higher importance to the public, which necessitated the common carrier be held to a higher standard when compared to other companies. Id.; see Adam Candeub, Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230, 22 Yale J. L. & Tech. 391, 403 (2020) (“Common carriage

emerged from the law of “public callings” which in turn originally developed from the medieval guild system.”). Common Carrier Law in the United States increased in prevalence throughout the late 19th century and early 20th century. Candeb supra at 404. Initially, railroads were governed under the common law until states began passing their own Common Carrier Laws regulating railroads. Interstate Com. Comm'n v. Balt. & O. R. Co., 145 U.S. 263, 275-76 (1892). Subsequently, Congress passed a statute making railroads common carriers. Id. at 275. After regulation of railroads became completed, the telegraph jumpstarted the next great technological leap and it would be regulated as a common carrier.

The United States Congress began regulating telephone and telegraph companies as common carriers in 1910. Daniel F. Spulber & Christopher S. Yoo, Toward A Unified Theory of Access to Local Telephone Networks, 61 Fed. Comm. L.J. 43, 46 (2008). Congress created a modern law regulating telecommunication common carriers in the Communications Act of 1934. Candeb supra at 395. Today this act requires the common carrier to transmit a message upon request. 47 U.S.C. § 201(a). In addition to transmitting messages when requested, federal Common Carrier Law prevents discriminatory practices in sending messages. 47 U.S.C. § 202; see Primrose v. W. Union Tel. Co., 154 U.S. 1, 14 (1894) (discussing telegraph companies not being able to discriminate). Historical precedent establishes that when new technology arises, the government usually utilizes their power to designate a company as a common carrier.

Delmont has the authority to pass the CC Law. The state has created its own Common Carrier Law to define and regulate common carriers operating within the state. R. at 20. This is indistinguishable from how states regulated the railroad through common carrier statutes prior to passage of a federal law. Interstate Com. Comm'n, 145 U.S. at 275. In this case, federal preemption is not relevant because both parties failed to raise the issue in the lower courts, thus forfeited on

appeal. R. at 20 n. 10; Singleton v. Wulff, 428 U.S. 106, 120 (1976). Therefore, the state of Delmont has properly created a statute for the regulation of common carriers; the next step is to determine that Poster is properly classified as a common carrier.

Poster meets the basic requirements of being a common carrier under the CC Law, because of their substantial market share and subsequent influence over the market. Poster “holds seventy-seven percent of the artistic self-publication market.” R. at 19. In addition to this market share, the competition to Poster has an inferior product. R. at 10. Therefore, Delmont citizens only have one choice when looking to self-publication of their art and literature: Poster, because of Poster’s substantial market share and superior product. R. at 10. When considering the designation of a common carrier, the first important factor for courts to consider is market share. Biden v. Knight First Amend. Inst. At Columbia Univ., 141 S. Ct. 1220, 1222-23 (2021) (Thomas, J., concurring); *see* Candeub supra at 398-99 (arguing that States allow a firm to exist with significant market power in exchange for placing common carrier regulations on the company). Poster controls a substantial market share of the self-publication of art and literature. R. at 10. Delmont chose to regulate Poster as a common carrier in response to the Poster’s substantial influence. R. at 35. This is analogous to when states responded to railroads gaining influence over state markets, and the states took it upon themselves to regulate railroads as common carriers. Interstate Com. Comm'n, 145 U.S. at 275. This situation is comparable to when Congress designated telegraph and telephone operators as common carriers. 47 U.S.C. § 201. Poster’s substantial market share necessitated Delmont’s designation of Poster as a common carrier. R. at 35. Delmont could have taken an antitrust action but rather decided to designate companies with a substantial market share as common carriers. See Hawaii v. Standard Oil Co. of Cal., 405 U.S. 251, 258 (1972) (States can

bring antitrust actions on behalf of their citizens). Therefore, Poster properly falls under the CC Law.

2. The rights of common carriers are limited; thus, the law does not violate the First Amendment.

For thorough analysis in determining the First Amendment rights of common carriers, a court must examine other restrictions placed on common carriers. Some limitations placed on common carriers include nondiscrimination, rate regulation, and service requirements. *Candeub supra* at 409-10. These requirements demonstrate the limitations traditionally placed on the rights of common carriers to limit their market power. *Id.* at 408. Thus, the action in the CC Law is a natural extension of the limitations placed on common carriers.

The core to the limitation of common carrier regulation is that common carriers are “bound to serve all customers alike, without discrimination.” *Primrose*, 154 U.S. at 14. This allocates a legal requirement on common carriers to serve everyone without discrimination. *Candeub supra* at 409. The requirement for a common carrier to serve the public without discrimination can be extended to include discrimination based on the content of speech. *See Nat'l Ass'n of Regul. Util. Comm'rs v. F.C.C.*, 533 F.2d 601, 608-09 (D.C.C. 1976) (“a carrier will not be a common carrier where its practice is to make individualized decisions in particular cases whether and on what terms to serve.”). The CC Law requiring common carriers in the state to serve everyone no matter their viewpoint is a natural extension of Common Carrier Law into the modern day.

As technology advanced, Congress started regulating broadcast television, which led the Supreme Court to determine the applicable free speech rights. In the process of regulating advancing technology Congress specifically did not designate broadcasters as common carriers.

CBS v. Democratic Nat. Comm., 412 U.S. 94, 116 (1973). Therefore, when F.C.C. v. League of Women Voters of Cal. came to the Court, the issue of common carrier rights was not directly decided, but the Court decided the issue of broadcaster rights. 468 U.S. 364, 378 (1984). The Court made this clear when they distinguished broadcasters from common carriers by stating: “[u]nlike common carriers, broadcasters are ‘entitled under the First Amendment to exercise ‘the widest journalistic freedom consistent with their public [duties].’” Id. (Quoting CBS, Inc. v. F.C.C., 453 U.S. 367, 395 (1981)). Therefore, broadcasters receive more First Amendment rights compared to common carriers.

The Court of Appeals erred when equating the speech rights of broadcasters and common carriers because common carriers receive higher limitations on their speech rights. The Court’s analysis of broadcaster First Amendment rights in League of Women Voters determined these rights should be examined by strict scrutiny. 468 U.S. at 380. In doing so the Court distinguished broadcasters from common carriers and thus implied the two have different First Amendment rights. Id. at 378. The Court did not expand further on the rights of common carriers beyond distinguishing them from broadcasters. Id. This distinction shows why strict scrutiny should not be applied based on this case. The differences between broadcasters and common carriers were distinguished and the court of appeals erred when using this precedent to evaluate the First Amendment rights of common carriers.

There may not be a clear, concise First Amendment standard in the Supreme Court precedent, but the court should look to the traditional role of common carrier regulations in society as a guide. This Court announced, “applying old doctrines to new digital platforms is rarely straightforward.” Biden, 141 S. Ct. at 1221 (Thomas, J., concurring); see Candeub supra at 405-06 (explaining the difficulty in unraveling Common Carrier Law). However, the precedent is clear

that the CC Law restricts common carriers the same way as businesses historically have been restricted. See Primrose, 154 U.S. at 14 (stating common carriers cannot discriminate).

In today's internet age, the government requires common carriers to avoid discriminating against users of their website, which creates a legitimate government interest. When the primary form of commerce stemmed from the transportation of goods, the courts of English common law allowed for the regulation of transportation companies as common carriers. Candeub supra at 403. When railroads began to revolutionize the way people and goods were transported, state governments and the federal government began regulating railroads as common carriers. Interstate Com. Comm'n, 145 U.S. at 275. The telegraph revolutionized the world by connecting society, but the connectedness and ease of discrimination caused telegraph companies to become regulated as common carriers. Candeub supra at 395. These laws all served to advance the legitimate government interest of nondiscrimination in business transactions to allow the free flow of goods and information in society. R. at 35. The CC Law is rationally related to the government's interest by applying nondiscrimination by common carriers throughout the modern age of internet communications by preventing online companies from discriminating against individuals. R. at 35. The CC Law is a logical extension of the interest for the modern age of internet communications.

B. The CC Law should be upheld under the First Amendment scrutiny.

The CC Law does not violate Posters First Amendment rights. The relevant provision of the First Amendment states "Congress shall make no law (...) abridging the freedom of speech". U.S. Const. amend. I. This case presents a content neutral law which incidentally limits one form of expression by a common carrier. The Court established that a content neutral restriction is "[a]

regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). When a law is an incidental restriction on the First Amendment it should be evaluated under intermediate scrutiny. United States v. O'Brien, 391 U.S. 367, 376 (1968). When a law is content neutral with its effect on speech, then the law is evaluated under intermediate scrutiny, but if the law is not content neutral then courts must use strict scrutiny. Turner Broad. Sys., Inc. v. F.C.C., 520 U.S. 180, 189 (1997); Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 163 (2015). Considering the traditional restrictive nature of common carrier rights¹, the incidental impact on speech and content neutrality of the statute, intermediate scrutiny should be applied to the CC law.

The CC Law is properly evaluated under Intermediate scrutiny. When considering intermediate scrutiny, the Supreme Court stated: “A content-neutral regulation will be sustained under the First Amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.” Turner, 520 U.S. at 189. The Supreme Court also recognized the “sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms.” United States v. O'Brien, 391 U.S. 367, 376 (1968). The CC Law represents an incidental limitation on the free speech of common carriers.

When the Supreme Court considered the issue of the cable companies being required to carry certain cable channels, the “must carry provision”, The Court applied intermediate scrutiny. Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 630 (1994). In evaluating the law, the Court

¹ As discussed in Section IA.

looked at Congress’s reason for passing the law: “Congress . . . determined that the cable industry is characterized by horizontal concentration, with many cable operators sharing common ownership. This has resulted in greater ‘barriers to entry for new programmers and a reduction in the number of media voices available to consumers.’” Id. at 634 (Quoting Cable Television Consumer Protection and Competition Act of 1992, PL 102–385, § 2(a)(4) 106 Stat 1460). After the passage of the law, cable companies challenged the must carry provision as a violation of their First Amendment rights. Id. The government argued that the “must carry provision” served an important government interest of protecting “a vital part of the Nation's communication system.” Id. at 647. The court continued the analysis with the proposition that “laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral.” Id. at 643. After considering the available record, the court remanded the case down to the District Court for further fact finding. Id. at 668. However, when the case returned to the Supreme Court, the Court upheld the law under intermediate scrutiny. Turner, 520 U.S. at 224-25. The Court determined that the law had a modest impact on speech. Id. at 214.

Intermediate scrutiny should apply, and the CC Law should pass because the CC Law has a comparable impact on speech to the “must carrier provision.” The CC Law serves an important government interest separate from suppressing speech by providing the people of Delmont access to online markets. R. at 34. Poster controls a substantial market share of the self-publication market, which leaves artists without any other effective means of self-publication of their work without potential intervention by Poster. R. at 10. In Turner, the government protected an important part of the communication system by requiring cable television to carry certain channels. 512 U.S. at 647. This is analogous to Delmont seeking to maintain its citizens' access to the markets

Poster provides. R. at 35. Thus, the CC Law only has an incidental content neutral effect on speech by requiring the common carrier to serve everyone.

The CC Law is content neutral on its face and thus intermediate scrutiny should apply. Content based laws include, “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” Reed, 576 U.S. at 163. The CC Law is content neutral because the government does not evaluate what the common carrier is blocking; the CC Law only prevents Common Carriers from blocking access due to the viewpoint of the speaker. R. at 20. The CC law does not stop poster from expressing a message only the method of expression, Poster is free to express their views in other ways. See R. at 5. (Stating Poster joined a newspaper op-ed stating an opinion on an issue).

The CC Law passes intermediate scrutiny because it does not burden speech anymore necessary than to advance the important interest. The CC Law does not prevent Poster from speaking in all capacities the law only prevents Poster from discriminating against based on viewpoint. R. at 35. The CC Law is closely related to the government requiring other common carriers to refrain from discriminating in their business, thus, the CC Law passes intermediate scrutiny and must be upheld.

Poster may argue that the CC Law needs to pass strict scrutiny. Strict scrutiny is applied when a law regulates speech based on its content. Reed, 576 U.S. at 156. When strict scrutiny is applied, the law will be upheld when “the restriction is narrowly tailored to further a substantial governmental interest.” League of Women Voters, 468 U.S. at 380. Strict scrutiny should not be applied to the CC Law, but if the Court applies strict scrutiny the CC Law should be upheld.

Strict scrutiny is not the correct level of scrutiny because of the limits traditionally placed on common carriers and the content neutrality of the restriction. The limits placed on common

carriers² concern their inability to discriminate against individuals seeking their services. The application of the limitation to the First Amendment was recognized in dicta in League of Women Voters to provide common carriers with a reduced First Amendment protection when compared to the strict scrutiny broadcasters receive. 468 U.S. at 378. Furthermore, the Reed Court established that strict scrutiny should be used when the government disagrees with the message of the speech. 576 U.S. at 156. In this case, the government does not disagree with the message that Poster is expressing, but instead the government disagrees with Poster blocking citizens' access to a service. R. at 35. Poster is free to express the message in other manners, such as writing a newspaper op-ed. R. at 5. Hence, strict scrutiny is not the correct level of scrutiny.

If the Court applies strict scrutiny the CC law is constitutional. A law passes strict scrutiny when it advances a substantial government interest, and the law is narrowly tailored to fit that interest. League of Women Voters, 468 U.S. at 380. In support of the CC Law, the Delmont government advances the interests of securing citizens access to the marketplace provided by online common carriers. R. at 35. This interest is substantial because of the importance of access to online markets and the amount of speech controlled by common carriers. R. at 35. By passing the CC Law, the government prevented its citizens from being discriminated against by a platform with a substantial market share. R. at 35. Common carriers with a substantial market share could easily obstruct Delmont citizens from having an online public square to speak their opinions on religion, politics, philanthropic ideals, and other important topics. R. at 34-35. The CC Law is narrowly tailored to achieve the aforementioned interests because the CC Law does not prevent Poster from speaking in means that do not prevent access to the marketplace. See R. at 5 (stating

² Full Discussion of the limitations on common carriers is found in section IA2.

Poster wrote an op-ed in the newspaper). Therefore, the CC Law should pass the First Amendment scrutiny.

II. THE DELMONT STATUTE DOES NOT VIOLATE POSTER’S FIRST AMENDMENT RIGHTS BECAUSE IT IS NEUTRAL AND GENERALLY APPLICABLE.

A. The Delmont CC Law is neutral because it is neutral on its face, and there is no pattern of animosity targeting a specific group.

When determining whether the law is neutral, the court first looks to the text, where the law does not discriminate on its face, or patterns of animosity, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 542-43 (1993). The law is neutral if it does not “proceed in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” Fulton v. City of Phila., 141 S. Ct. 1868, 1877 (2021).

The Court considers the plain text and whether a pattern of animosity targets a specific group when determining whether the State ordinances are neutral. In Lukumi, the City of Hialeah adopted an ordinance to prohibit individuals or groups from sacrificing animals for any rituals. 508 U.S. at 527. In the analysis, the Court found that the text of the ordinances contained words like “sacrifice” and “ritual,” which have strong religious connotations, suggesting a secular meaning. Id. at 536. Furthermore, the minutes and taped excerpts of city council meetings also suggested animosity towards the Santeria religion. Id. at 541. Examples include statements made by council members indicating that Santeria is against what the Bible allows for, the chaplain of the Hialeah Police Department identifying the Santeria using words like “‘a sin,’ ‘foolishness,’ ‘an abomination to the Lord,’ and the worship of ‘demons,’” and the city attorney commenting

the religious practice as abhorrent to its citizen. Id. at 541-42. The Court reasoned that the terms of the ordinance target religious exercise and that these patterns of conduct towards Santeria indicate animosity; therefore, the ordinances are not neutral.

The plain text of the CC Law is neutral on its face, and there is no pattern of animosity targeting a specific group; therefore, the law is neutral. Unlike the ordinance in Lukumi, where the text itself contained words that suggest strong religious connotation and patterns of manners by state government officials that shows animosity towards the Santeria religion, 508 U.S. at 536, 541-42, the CC Law did not have any anti-religious remarks, it encourages platforms to serve all accounts, “regardless of political, ideological, or religious viewpoint.” R. at 20. Even though Mr. Wallace made comments that specifically identified Respondent by its religious heritage, this is the first time the CC Law has been enforced and identified a particular group. R. at 32. There is no other identified event to suggest that the enactment of CC Law had other repeated instances to serve as patterns of discriminatory motive to target any specific platform; instead, it is passed to be inclusive to various viewpoints. R. at 32. Therefore, the court should reverse the Court of Appeals decision and hold that the CC Law is neutral.

The Respondent is likely to argue that courts should consider factors including “the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history” when evaluating whether the law is neutral. Masterpiece Cakeshop, Ltd v. Colo. Civ. Rts. Comm’n, 138 S. ct. 1719, 1721 (2018). Specifically, the Respondent will emphasize the reasoning by the Court of Appeals that they have taken a similar stance and action with another work, but the government did not act on enforcing the CC Law. R. at 22. The dissimilarity in enforcing the law

with other stances shows that it targets one's religious status. Furthermore, the Respondent will point out that the CC Law is directed to platforms with a "substantial market share," R. at 20, and the Respondent takes the vast market share, R. at 35. Because there is no other platform taking substantial market share, the CC Law is designed to obstruct the ability of the Respondent to exercise their religious values. The Respondent will argue that similar to the ordinances in Lukumi, where there was animosity demonstrated toward the religious group by the governors, 508 U.S. at 541-42, here, the CC Law is also discriminatorily enforced when the Respondent suspended one's account due to a conflict on religious value and being targeted as the only platform fitting the "substantial market share" regulatory requirement. Both the ordinances and CC Law demonstrated animosity towards religious beliefs; therefore, the Respondent will argue that the CC Law is not neutral.

There is a significant flaw in the Respondent's argument, such that it fails to consider the fact that the CC Law was enacted after the Respondent took prior action. R. at 22. Prior action by the Respondent was "[a] few years after [the] launch" of Poster Inc. in 1998, which means that prior action should have taken place in the early 2000s. R. at 19. The CC Law was enacted in 2020. R. at 20. Since the CC Law did not pass when the Respondent took the prior action, regulations from the CC Law would not have applied; therefore, it is rather rational that the government did not enforce the CC Law with the Respondent's prior action. Moreover, because the current issue about Ms. Thornberry is the only enforcement of the law against the Respondent with no other instance, there is no procedural history of animosity towards the Respondent based on religious means. R. at 22. The CC Law is not aimed to coerce individuals to conform to governmental action that violates their religious beliefs, See Lyng v. Northwest

Indian Cemetery Protective Ass'n, 485 U.S. 439, 449 (1988) (the Court held that when “[g]overnment action did not ‘penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens,’” and that “affected individuals were not being ‘coerced by the Government’s action into violating their religious beliefs,’” there is no free exercise violation) instead, it is aiming to promote diverse viewpoints such as political, ideological, and religious. Hence, the CC Law is different from the ordinances in Lukumi. The CC Law is neutral on its face, and there is no pattern of animosity towards a particular group; therefore, the Court should reverse the decision of the Court of Appeals decision and hold the CC Law as neutral.

B. Delmont Law is generally applicable as the law does not create exemptions.

The CC Law is generally applicable because it does not create individualized exemptions for common carriers based on religion or for other similar reasons. The general applicability standard requires that the law does not create “a mechanism for individualized exemptions” established by the government when considering reasons for an organization’s conduct. Fulton, 141 S.Ct. at 1871 (quoting Emp. Div., Dep’t of Hum. Res. of Or. v. Smith, 494 U.S. 872, 884 (1990)).

Concerning claims that the law is generally applicable because the law does not create individualized exemptions created by the government when considering reasons for an organization’s conduct, Courts have stated that exemptions for similar actors in the community defeat general applicability when a law is pursued against one specific actor or group of actors. In Lukumi, the city government of Hialeah set out to ban animal sacrifice, which is key to the Santeria, who believe animal sacrifice is important during key moments in people’s lives such as

death rites and curing of the sick. 508 U.S. at 525-26. Hialeah requested, from the attorney general, an opinion to determine the Santeria's animal sacrifice not a necessary killing and to be banned under the city ordinances is usually blocked under Florida law. Id. at 527. The Florida attorney general stated that sacrificing animals without consumption is deemed an unnecessary killing and is prohibited by Florida law. Id. Hialeah made laws banning animals' sacrifice but exempted religious killings such as kosher animals and exceptions for small butchers who operated outside normal zones for butchers. Id. at 527-28. Other exemptions included the killing of pests, euthanasia of unwanted pets, and hunters butchering their kills and disposal of the animal's carcasses. Id. at 544. The Court held the city's laws aimed solely at the Santeria to end animal sacrifice within the community. Id. at 545. Prohibition aimed at a specific religion is not generally applicable, especially when it gives exemptions for similar actions performed by other actors within society. Id. See also Lyng, 485 U.S. at 449 (1988) (the government did not "penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens.").

The CC Law treats all common carriers with a substantial market share by not creating exemptions. The Court may rush to incorrectly apply Lukumi to the CC Law, in that the CC Law singles out Poster as it is a religious based common carrier with a substantial market share by comparing Poster to Hialeah's city ban on animal sacrifice solely affecting the Santeria in Lukumi. 508 U.S. at 527. R. at 16. However, this is contrary to Lukumi, in Lukumi Hialeah purposely singled out Santeria's religious use of animal sacrifice but created exemptions, which this Court held wrong as prohibition to one religion is not generally applicable to others who perform the same act. Id. at 545. Furthermore, in Lukumi, where Hialeah specifically tried to end

Santeria's religious animal sacrifice but left exemptions for kosher butchers, exterminators, and animal euthanasia. Id. at 527-28. Delmont did not purposely single out Poster with creating the CC Law because the law mentions all common carriers with substantive market share and limits common carriers from donations to political, religious, or philanthropic causes. R. at 3. Though Poster is involved in donations to the APC and other philanthropic causes, the law is applied evenly to all common carriers as all common carriers cannot donate to political, religious, or philanthropic causes. R. at 3. Contrary to Lukumi, where only the Santeria faced a total ban from religious animal sacrifice, unlike their Jewish neighbors with kosher butcher facilities, here all common carriers who enjoy a substantial market share are unable to make donations to religious, political, or philanthropic causes to prevent common carriers from preferring one cause to another. Id. at 527-28. R. at 3. In fact, Trapp, Delmont's Governor, insisted on including religion in the statute to prevent the creation of an exemption for donations to religions or religious groups. R. at 35. Again, contrary to Lukumi, where the City of Hialeah constantly made exemptions to assist other actors within the city to avoid giving the Santeria the ability to practice their religion, Delmont ensured the CC law would generally apply by preventing exemptions for common carriers who hold a substantial market share and limiting them from donating to religious, political, or philanthropic causes.

Alternatively, suppose the law incidentally burdens religion, where it fails to satisfy neutrality and general applicability. In that case, it is subject to strict scrutiny under the Free Exercise Clause, where the law is constitutional if it can be justified with a compelling governmental interest and is narrowly tailored to that interest. Id. at 520; Fulton, 141 S. Ct. at 1876. A law is held neutral if it can demonstrate a compelling interest in uniform application

such that granting accommodation would seriously compromise administration. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 435 (2006). Under Smith, the Court held that “[l]aws . . . are made for the government action,” and to grant a religious exception would make “the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become law unto himself.” 494 U.S. at 879. This policy applies to the implementation of the CC Law. The intent for regulating common carriers using corporate funds to contribute “to political, religious, or philanthropic causes” is to promote individual voices through platforms, “regardless of political, ideological, or religious viewpoint. R. at 20. The Respondent would argue that they are specifically targeted because they are the only platform with a substantial market share within their field of practice. R at 35. However, granting certain organizations accommodations weakens the ability to standardize administration common carriers and stir the interest of other common carriers to request accommodations based on small group interest, failing to recognize the best interest of society. The government also does not need to go in every possible way to grant individual accommodation. The policy is to provide the government with the ability to regulate common carriers for public benefit.

The Court should find the CC Law neutral and generally applicable and overturn the decision of the Court of Appeals.

CONCLUSION

For the foregoing reasons, Petitioner requests this Court to reverse the Court of Appeals’ judgment for the free speech issue and reverse the denial of the free exercise issue.

/s/ Team 21
Counsel for Petitioner
January 31, 2022

CERTIFICATE OF COMPLIANCE

The work product contained in all copies of this team's brief is in fact the work product of the team members; this team has complied fully with our school's governing honor code; and this team has complied with all Rules of the Competition.

/s/ Team 21
Counsel for Petitioner
January 31, 2022

APPENDIX

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

Delmont Rev. Stat. 9-1.120(a). Designates internet platforms with substantial market share as common carriers. The law requires such platforms shall serve who seek or maintain an account, regardless of political, ideological, or religious viewpoint and refrain from using corporate funds to contribute to political, religious, or philanthropic causes.