No. 22-CV-7654

In the Supreme Court of the United States

WILL WALLACE,

Petitioner,

v.

POSTER, INC

Respondent.

On Writ of Certiorari from the Fifteenth Circuit

to the United States Supreme Court

BRIEF FOR THE RESPONDENT

Team #024

Counsel for the Respondent

QUESTIONS PRESENTED

I. Whether the Delmont Common Carrier Law, requiring a private corporation to surrender its editorial discretion and provide a forum for speech against its viewpoints, violates the First Amendment of the United States Constitution.

II. Does the Delmont Common Carrier Law violate the Free Exercise Clause of the First Amendment when it requires a private corporation both to publish content that directly offends its sincerely held religious beliefs and to abstain from contributing to any religious or philanthropic causes?

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STATEMENT OF JURISDICTION

The judgment of the District Court of Delmont was entered on September 1, 2021. R. at 17. The United States Circuit Court for the Fifteenth Circuit entered a final judgment and reversed the opinion of the District Court of Delmont. R. at 18. The United States Supreme Court granted the Petition for a Writ of Certiorari and has jurisdiction pursuant to 28 U.S.C. §1254.

STATEMENT OF THE CASE

This Court is asked to find that the Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120, is unconstitutional under the First Amendment of the United States Constitution.

Poster is a private internet platform, incorporated and headquartered in Delmont, founded by members of the American Peace Church. R. at 2. Its central tenet is non-aggression/pacifism, and Poster's founders started the company with the intent of promoting peacebuilding through cultural development. R. at 2. Poster provides discounted services to members of their religion and encourages all its users to promote peace. R. at 3.

Poster allows artists to self-publish their work and charges users a fee to create an account and receives a portion of each sale of artistic material. R. at 2. Although Poster disclaims endorsement of the views of their artists, Poster maintains the editorial discretion to accept or reject material posted to their site. R. at 2. It has suspended an account prior to the present action, when a user published a work entitled, “Murder Your Enemies: An Insurrectionist’s Guide to Total War.” Poster occupies seventy-seven percent of the artistic publication space, and is now subject to the Delmont Common Carrier Law. R. at 2.

In addition to promoting non-aggression through its publishing, one of the American Peace Church’s core religious activities is philanthropy. R. at 19. Poster donates fifteen percent of all of its profits to philanthropic efforts centered on education and culture. R. at 19. One of the

earliest and most notable philanthropic efforts that the American Peace Church engages in is establishing lending libraries in poor communities. R. at 19.

On June 1, 2020, the State of Delmont engaged in a targeted effort to pass its Common Carrier Law, which designates internet platforms with "substantial market share" as common carriers. R. at 1. During the Governor of Delmont's political campaign, he indicated that Poster is the type of website that the Common Carrier Law is designed to address. R. at 37. The statute requires common carriers to "serve all who seek or maintain an account, regardless of political, ideological or religious viewpoint." R. at 3. In addition to the equal access requirement, the Delmont Common Carrier law requires that common carriers "refrain from using corporate funds to contribute to political, religious or philanthropic causes." R. at 3. The stated purpose of the Common Carrier law is to uphold viewpoint neutrality. R. at 3.

In August 2021, Delmont's Attorney General, Will Wallace, brought action against Poster under the Delmont Common Carrier Law after it suspended the account of one of its users, Ms. Katherine Thornberry. R. at 5-6. This was the first time in the 14 months since its enactment that the Common Carrier Law had been enforced. R. at 6. Ms. Thornberry began using Poster in 2018 in an attempt to promote her novel, originally titled "Animal Pharma." R. at 3. After attending an animal rights protest, Ms. Thornberry changed the title of her work to "Blood is Blood." R. at 4. This slogan is well associated with the group AntiPharma, which advocates civic violence against those who partake in animal abuse. R. at 4. Accordingly, Poster suspended the account of Ms. Thornberry, as this work was against Poster's pacifist values. R. at 4. Ms. Thornberry engaged in a nationally publicized crusade against Poster's actions, in spite of the fact that Poster merely suspended her account pending a change in title. R. at 22.

When it learned of Ms. Thornberry's protest, Delmont fined Poster under the Delmont Common Carrier law. R. at 5-6. The fine amounted to 35% of Poster's daily business profits every day until compliance. R. 20. Poster brought this action in the District Court of Delmont contesting its status as a common carrier and objecting to the Common Carrier Law as it violates its right to free speech and free exercise. R. at 6. The Court of Appeals for the Fifteenth Circuit reversed the finding of the District Court and held that the Delmont Common Carrier law violates Poster's right to freedom of speech and free exercise. R. 35.

SUMMARY OF THE ARGUMENT

Respondents now respectfully ask this Court to affirm the holding of the Fifteenth Circuit and find that the Delmont Common Carrier law is unconstitutional under both the Free Speech Clause and the Free Exercise Clause of the First Amendment.

This Court should decline to extend common carrier status to Poster, as Poster engages in speech of its own and is not a mere conduit for the speech of others. Expanding the definition of common carrier status to organizations that engage in speech of their own raises First Amendment concerns, as this Court has recognized that merely hosting the speech of others does not diminish the right to free speech. As Poster does not qualify as a common carrier, this Court should find that Poster is entitled to the full protection of the First Amendment as an online platform and private corporation.

Notwithstanding Poster's designation as a common carrier, Poster maintains the First Amendment right to engage in editorializing and cannot be compelled to host speech against its viewpoint. In Miami Herald Pub. Co. v. Tornillo this Court acknowledged that the editorial function itself is an aspect of speech, and deprivation of that right violates the First Amendment.

This Court has also recognized that a private company cannot be forced to host speech with which it disagrees. As a private religious organization, Poster maintains the First Amendment right to deny others from its platform who engage in speech against its values. Moreover, this Court should find the Delmont Common Carrier Law unconstitutional as it fails to satisfy strict scrutiny. The Delmont Common Carrier Law discriminates based on speaker, triggering strict scrutiny. Delmont's proposed reasoning for the legislation, promoting viewpoint neutrality, is not a compelling state interest and is undermined by the underinclusive nature of the legislation.

Additionally, this Court should find that the Delmont Common Carrier Law violates Poster's right to free exercise of religion under the First Amendment. First, this Court should recognize that the Delmont Common Carrier Law must pass muster under strict scrutiny because it is neither neutral nor generally applicable. Under the framework the Court set forth in Employment Division v. Smith, a law that is neutral and generally applicable may burden religious exercise without needing to pass strict scrutiny. A law lacks neutrality if its object is to target religion. In addition, a law is not generally applicable if it provides a formal mechanism for individualized exceptions. Here, the Delmont Common Carrier Law's no-contribution provision and serve-all provision are hostile to religion in both text and operation. The statute is not generally applicable because it grants Petitioner discretion to choose if, when, and how to enforce the statute's prohibitions. And even if the Court holds that the Delmont Common Carrier Law is neutral and generally applicable, it should still apply strict scrutiny because this is a "hybrid rights" case involving a free speech claim in tandem with a free exercise claim.

In order to withstand strict scrutiny, a law must be narrowly tailored to serve a compelling government interest. Here, no compelling government interest justifies the substantial burden inflicted on Respondent's religious practice by the two provisions at issue.

Even if there is a compelling interest in bolstering free speech, the statute is not the least restrictive means of achieving that interest and is seriously overbroad. The Delmont Common Carrier Law does not pass muster under strict scrutiny.

Therefore, this Court should hold that the Delmont Common Carrier Law is unconstitutional under both the Free Speech and Free Exercise Clauses of the First Amendment.

ARGUMENT

I. This Court should find that Poster's First Amendment right to free speech was violated as Poster was improperly classified as a common carrier and maintains the full protections of the First Amendment to make editorial judgements.

The First Amendment of the United States Constitution provides that "Congress shall make no law abridging the freedom of speech." U.S. Const., amend. I. This right has long been recognized as applying to both individual citizens and corporations. See Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California, 475 U.S. 1, 8 (1986).

While American jurisprudence has recognized that certain industries, known as common carriers, can be subject to regulation regardless of incidental impact of free speech rights, common carrier status has applied only to industries that "are mere conduits of information." See United States Telecom Ass'n v. Fed. Commc'ns Comm'n, 825 F.3d 674, 741 (D.C. Cir. 2016). Although one of Poster's functions is providing a platform for artistic expression, Poster maintains editorial discretion over its users and their work and engages it speech of its own. Accordingly, this Court should find that Poster is not a traditional common carrier and maintains full First Amendment Protections as an online corporation.

A. Traditional common carrier analysis has been limited to industries that lack editorial discretion and should not be extended to social media platforms.

While courts vary in what factors constitute designation as a common carrier, common carrier status has traditionally only applied to businesses that are neutral conduits of information.

See E.g., Am. Orient Exp. Ry. Co., LLC v. Surface Transp. Bd., 484 F.3d 554, 557 (D.C. Cir. 2007) (finding a luxury railcar operates as a common carrier). Because businesses such as telephone companies, postal services and railroads do not utilize editorial discretion or engage in speech of their own, equal access obligations rarely raised First Amendment concerns. United States Telecom Ass'n v. Fed. Commc'ns Comm'n, 825 F.3d 674, 741 (D.C. Cir. 2016) ("The absence of any First Amendment concern in the context of common carriers rests on the understanding that such entities, insofar as they are subject to equal access mandates, merely facilitate the transmission of the speech of others rather than engage in speech in their own right.")

Although the issue of whether social media platforms can be regulated as common carriers has never been presented to this Court, lower courts have declined to extend common carrier status to digital platforms. In NetChoice, LLC v. Moody, social media platforms challenged a Florida statute preventing sites of a certain size from banning or censoring the accounts and content of political candidates and journalistic enterprises. The court in NetChoice declined to analyze the platform as a common carrier, reasoning that the platform's editorial function precluded such a narrow interpretation. Explaining that "the concentration of market power among large social-media providers does not change the governing First Amendment principles," the court held that the statute was unconstitutional. NetChoice, LLC v. Moody, 2021 WL 2690876, at *7 (N.D. Fla. June 30, 2021); See also Howard v. America Online, Inc., 208 F.3d 741, 753 (9th Cir. 2000) (AOL was not a "common carrier" because it "does not act as a mere conduit for information.")

This Court should decline to classify Poster as a common carrier as Poster is not a neutral conduit of information and engages in its own speech as a religious organization. Although

Poster's platform allows users to engage in self publication, Poster retains editorial discretion to accept or reject material as it sees fit. R. at 2. Poster utilized this discretion to suspend the account of Ms. Thornberry, as her post titled "Blood is Blood" violated Poster's pacifist values. R. at 5. While an equal access mandate as described in United States Telecom Ass'n v. Fed. Commc'ns Comm'n generally does not raise First Amendment claims for industries that are neutral conduits of information, classifying Poster as a common carrier deprives the company of their right to engage in editorializing, and interferes with its own speech. Accordingly, Respondents ask this Court to find that Poster does not qualify as a common carrier.

B. State action jurisprudence further indicates that common carrier law is not intended to extend to platforms that utilize editorial discretion.

In state action cases, this Court emphasized that private actors do not lose their editorial discretion by merely providing a forum for speech. In Manhattan Community Access Corporation v. Halleck, television producers brought a First Amendment claim against a non-profit organization that operated a public access channel after they were denied access to airing their publication. Manhattan Cmty. Access Corp. v. Halleck, 139 S. Ct. 1921, 1928 (2019). The producers claimed that the non-profit organization should be classified as a state actor because they operated a public access channel. Id. Reasoning that "…merely hosting speech by others is not a traditional, exclusive public function and does not alone transform private entities into state actors subject to First Amendment constraints" this Court found that the non-profit organization was not a state actor and could therefore limit speech as they saw fit. Id. at 1930.

This Court cautioned that "If the rule were otherwise, all private property owners and private lessees who open their property for speech would be subject to First Amendment constraints and would lose the ability to exercise what they deem to be appropriate editorial discretion within that open forum. Private property owners and private lessees would face the unappetizing choice

of allowing all comers or closing the platform altogether." Id. at 1931; See also Hudgens v. N. L. R. B., 424 U.S. 507, 519 (1976).

Although the Court in Halleck discussed the rights of corporations in the context of state action claims, the Court's reasoning is applicable to the deprivation of online platform's right to free speech. As a private organization, Poster is not constrained by the First Amendment because it is not a state actor. However, Poster is currently faced with the same dilemma described in Halleck, as the compulsion to comply with the Delmont Common Carrier law ("CC Law") "would require us to either violate our religious mandate or close our business operation." R. at 37. This Court should apply its reasoning in Halleck and find that merely hosting speech for others does not deprive a private organization of their right to editorial discretion over the speech and speakers in the forum.

C. As an online platform and private corporation, Poster is entitled to the full protection of the First Amendment.

This Court has long recognized that First Amendment protections apply to speech on the internet. Reno v. Am. C.L. Union, 521 U.S. 844, 868 (1997). In Reno v. ACLU, this Court reasoned that regulation of the internet is not akin to regulation of other industries, such as broadcast media. Id. at 845. While broadcast media is strictly regulated, similar to common carriers, "these factors are not present in cyberspace." Id. at 868. In declining regulate internet speech as a distinct category, this Court has suggested that online platforms are entitled to full First Amendment protection rather than limited rights as a common carrier. Id.

It is also well established that the First Amendment right to free speech applies to corporations. First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 778 (1978). Under the First Amendment, the government may not suppress speech based on the speaker's identity. Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 342 (2010); See also First Nat. Bank of Boston

v. Bellotti, 435 U.S. 765, 778 (1978) ("Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster.")

It is undisputed that Poster is both an online platform and a corporation. R. at 2. Poster is a private corporation that is incorporated and headquartered in Delmont. R. at 1. Accordingly, Poster is entitled to First Amendment Protection under both doctrines.

II. Notwithstanding Poster's classification as a common carrier, Delmont's Common Carrier law is still unconstitutional as it interferes with Poster's own speech and editorial discretion.

This Court should find that the CC Law— requiring a private organization to surrender its editorial discretion and endorse speech with which it does not agree—violates the First Amendment.

In Miami Herald Pub. Co. v. Tornillo, this Court recognized that the editorial function is an aspect of speech protected by the First Amendment. Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 258 (1974). The CC Law deprives online platforms, such as Poster, of this constitutionally protected right to editorialize by requiring platforms to host *all* speech. Moreover, this Court has also recognized that compelling a private corporation to provide a forum for speech other than its own can infringe on the corporation's freedom of speech. Pacific Gas & Elec. Co. v. Pub. Utils. Comm'n, 475 U.S. 1, 9 (1986). The CC Law violates Poster's right to free speech, as it requires Poster to alter its own speech and provide a forum for speech with which it disagrees.

A. This Court should find that Delmont's Common Carrier Law is unconstitutional as it violates Poster's First Amendment right to editorialize.

A private party that uses its editorial judgment to select content for publication cannot be required by the government to publish the contents of others. In Miami Herald Pub. Co. v. Tornillo, this Court struck down a statute requiring a newspaper to provide political candidates

with a "right to reply" to editorials. Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 258 (1974). The Court reasoned that "the choice of material to go into a newspaper…whether fair or unfair… constitutes editorial control and judgement." Id. The Court rejected the argument that monopoly power of the press, the concentration of power to few newspapers, justified infringing on the First Amendment right of newspapers to decide for themselves what content is published. Id. at 249; See also FCC v. League of Women Voters of California, 468 U.S. 364 (1984) (finding a ban on broadcasting stations from engaging in editorializing unconstitutional under the First Amendment.)

In contrast, private entities that act merely as a conduit for the speech of others can be compelled to host all comers. See Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 656 (1994) (finding "must carry" provisions constitutional in the cable industry as cable operators merely transmit the speech of others rather than engage in editorializing.)

However, a state's desire to foster a variety of viewpoints does not justify infringing on private entity's right to Free Speech. In Columbia Broadcasting System, Inc. v. Democratic National Committee, the Court struck down a regulation requiring broadcast licensees to accept all paid political advertisements. Columbia Broad. Sys., Inc. v. Democratic Nat. Comm., 412 U.S. 94, 102 (1973). Although broadcast media is subject to a distinct constitutional analysis due to the limited nature of the resource that is not present in traditional free speech cases, Columbia Broadcasting emphasized that even broadcasters, who are traditionally subject to fair reporting requirements, maintain free speech rights. Id. at 104. While proponents argued that mandatory acceptance of advertising would serve the First Amendment interest in receiving more information and diversity of viewpoints, the court rejected this argument as it would intrude on the editorial discretion of broadcasters. Id. at 116.

As a private corporation, Poster's editorial discretion is protected by the First Amendment. While the state asserts that concentration of power within online publishing platforms requires that entities like Poster relinquish their editorial discretion, this argument was previously rejected by this Court in Tornillo. Similar to the newspaper editors in Tornillo, Poster retains and utilizes its editorial discretion to decide what art is published to its forum. R. at 2. Furthermore, the concern in Columbia Broadcasting that requiring broadcasters to accept all paid advertisements would strip broadcasters of all editorial discretion is even more prevalent in this case. As a religious organization, Poster has an extensive history of supporting artists that believe in their values, and often calls on their users to do the same. R. at 2. The CC Law requires Poster to provide a forum for speech and speakers that do not align with its values as a religion in violation of its First Amendment right to editorialize.

B. The Delmont Common Carrier Law further deprives Poster of its First Amendment rights as compelled hosting forces Poster to alter its own speech.

Private companies cannot be forced to provide access to a forum for speech that is against their own viewpoint. In Pacific Gas, this Court held that a private utility company could not be forced to allow opposing viewpoints in their newsletter provided to customers. Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of California, 475 U.S. 1, 20–21 (1986). The Court first emphasized that corporations are entitled to the same protections First Amendment protections as individuals, stating "[T]he identity of the speaker is not decisive in determining whether speech is protected." Id. at 9. Concluding that the company's newsletter was entitled to First Amendment protection, the Court analyzed whether compelling the company to provide access to speakers with opposing viewpoints hinders the company's own right to speak. Id. at 10. Citing Tornillo, the Court reasoned that compelled access to opposing viewpoints penalized the

expression of the speaker's own message and forced "speakers to alter their speech to conform with an agenda that they do not set." Id.

Importantly, the Court in Pacific Gas found that "The Court's decision in PruneYard Shopping Center v. Robins, is not to the contrary." Id. at 12. In PruneYard Shopping Center v. Robins, a privately owned shopping center denied a group of students from engaging in "publicly expressive activity not directly related to the company's commercial purposes." Id. (citing PruneYard Shopping Center v. Robins, 447 U.S. 74, 85–88 (1980)). The shopping center argued that providing access to solicitors violated the shopping center's First Amendment right. Id. Although the Court in Pruneyard held that she shopping center did not have a constitutional right to exclude pamphleteers from an area open to the public, the Court in Pacific Gas found that "Notably absent from PruneYard was any concern that access to this area might affect the shopping center owner's exercise of his own right to speak: the owner did not even allege that he objected to the content of the pamphlets." Id. PruneYard stands for the limited proposition that a private company can be required to tolerate the speech of others *if* it does not interfere with the speaker's own message. Id.

While the First Amendment prevents the government from requiring private companies to engage speech against their beliefs, it does not protect against the government requiring *conduct.* See Rumsfeld v. F. for Acad. & Institutional Rts., Inc., 547 U.S. 47, 53 (2006) (Requiring law schools to allow military recruiters on campus and provide the same use of school's facilities). This Court has recognized that editorializing is a form of speech rather than conduct. See Miami Herald Pub. Co. v. Tornillo, 418 U.S. 241, 258 (1974). Accordingly, Rumsfeld is inapplicable to this analysis.

Lack of an explicit message does not deprive private organizations of First Amendment protection. In Hurley this Court held that application of a public accommodation law to parade organizers which required organizers to include participants with views against the organizer's violated the First Amendment. Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., 515 U.S. 557, 566 (1995). The parade consisted of 20,000 marchers, and the organizers of the parade did not abide by a formal procedure for admission. Id. at 560. In fact, organizers had admitted groups who simply showed up at the parade without having applied and did "not generally inquire into the specific messages or views of each applicant." Id. at 562. While challenger's claimed that the parade lacked a coherent speech product, this Court reasoned that "[a]lthough the Council has been rather lenient in admitting participants to its parade, a private speaker does not forfeit constitutional protection simply by combining multifarious voices, by failing to edit their themes to isolate a specific message as the exclusive subject matter of the speech, or by failing to generate, as an original matter, each item featured in the communication." Id. at 572. The court reasoned that each participating unit affected the message portrayed by organizers and requiring organizers to admit all comers altered the expressive conduct of the parade. Id. Although challengers claimed that this holding was inconsistent with Turner, the parade organizers more closely resembled editors than "mere conduits for speech." Id. at 575.

Compelling Poster to provide a forum for speech with which it does not agree violates Poster's First Amendment right to freedom of speech. Similar to the space in pamphlets described in Pacific Gas, the CC Law requires Poster to host speech against its own values on its site. Poster was founded by the American Peace Church, and all members of Poster's board of directors are currently members of the American Peace Church. R. at 2. One of the central tenants of the American Peace Church is non-aggression and pacifism. Under the CC Law,

Poster is required to allow all speech, even speech fundamentally against its own values, such as the speech of Ms. Thornberry. Ms. Thornberry posted work with the title "Blood is Blood." This mantra has been used by an extremist animal rights group known as AntiPharma, which advocates civic violence in response to violence against animals. Just as the utilities company in Pacific Gas could not be forced to allow the speech of an organization against their viewpoints, Poster should not be required to host speech of Ms. Thornberry, or any other individual that violates their beliefs.

This case is distinguishable from both PruneYard and Rumsfeld, as it is undisputed that Poster engages in its own speech and Poster asserts that the speech it is required to host—speech against its own viewpoint— impacts its own right to speak. Moreover, Poster does not surrender its right to free speech by allowing others to engage on its platform. As stated in Hurley, "a private speaker does not forfeit constitutional protection simply by combining multifarious voices…." Just as the organizers in Hurley did not individually inquire into the beliefs of every group marching in the parade, Poster is not required to evaluate each of their users on a case-by-case basis, nor is Poster required to curate their site to present a specific theme. This Court should apply its reasoning in Pacific Gas and Hurley and find that requiring Poster to host speech of users, such as Ms. Thornberry, violates Poster's right to free speech.

III. Even if Poster was properly classified as a common carrier, Delmont's Common Carrier law is still unconstitutional as it discriminates between speakers and fails to satisfy strict scrutiny.

Restrictions of speech based on the speaker's identity are subject to strict scrutiny. Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 340 (2010). The CC Law applies to only certain large online platforms, discriminating not only against only platforms, but online platforms of a specific size. Accordingly, the CC Law must be subject to strict scrutiny.

Under strict scrutiny, Delmont must assert a compelling state interest for the legislation and show that the legislation is narrowly tailored to achieve that interest. Reed v. Town of Gilbert, Ariz., 576 U.S. 155, 170 (2015). Delmont's proposed interest, viewpoint neutrality, is not a compelling government interest, nor is the underinclusive nature of the law narrowly tailored. Accordingly, Respondents ask this Court to find that the CC Law fails to pass constitutional muster.

A. This Court should evaluate the Delmont Common Carrier Law under strict scrutiny analysis as it discriminates based on the speaker's identity.

This Court has recognized that speech restrictions based on the identity of the speaker are an indication of content discrimination. Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 340 (2010). In striking down a regulation prohibiting corporations and unions from expressly advocating for a candidate in an election, the court in Citizens United held that that the government may not suppress speech because of a corporate speaker's identity. Id. The court cautioned that "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content." Id. at 352. Specifically, "[d]ifferential treatment of media corporations and other corporations cannot be squared with the First Amendment." Id.

Regulations burdening speech based on the speaker's identity are subject to strict scrutiny. See Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue, 460 U.S. 575, 591 (1983) (finding a tax targeting a small group of newspapers subject to strict scrutiny analysis); Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 229 (1987) (applying a strict scrutiny analysis to tax scheme that burdened only a small group of magazines).

The Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120(a), is a content-based regulation as it discriminates based on speaker. This law only applies to internet platforms with "substantial market share." R. at. 3. Just as the regulation in Citizen's United differentiated

between corporations and media entities, the CC Law targets only internet platforms that meet a particular size requirement. This act not only distinguishes internet platforms from other entities, but also discriminately applies to only "certain large platforms." R. at 1. As in Minneapolis Star and Tribune, this distinction between industries and between platforms of different size triggers strict scrutiny. Accordingly, the CC Law must be subject to strict scrutiny.

B. The Delmont Common Carrier law fails to satisfy strict scrutiny as it lacks a compelling state interest and is not narrowly tailored.

Under strict scrutiny, the state has the burden to "prove the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." Reed, 576 U.S. at 171.

Regulations that target a particular group are unlikely to have a compelling state interest. See Minneapolis Star & Trib. Co. v. Minnesota Com'r of Revenue, 460 U.S. 575, 591–92, (1983) ("we think that recognizing a power in the State not only to single out the press but also to tailor the tax so that it singles out a few members of the press presents such a potential for abuse that no interest suggested by Minnesota can justify the scheme").

Desire to foster communication is not a compelling state interest when selectively applied to industries or subsects of an industry. In Ragland, the state asserted the desire to "foster communication" as the compelling interest for taxing only particular magazines. Arkansas Writers' Project, Inc. v. Ragland, 481 U.S. 221, 232 (1987). The Court rejected this argument, reasoning that *"*[while this state interest might support a blanket exemption of the press from the sales tax, it cannot justify selective taxation of certain publishers." Id. Moreover, a law cannot be narrowly tailored if it is underinclusive or overinclusive. See Reed, 576 U.S. 155 at 172 (reasoning that a law prohibiting specific types of signs was not narrowly tailored to advance the interest of prohibiting aesthetics when other signs were permitted.)

The state's proposed interest for enactment of the CC Law—preventing private organizations from discrimination based on political viewpoint— is not a compelling state interest. R. at 6. The CC Law applies only to internet platforms with substantial market share and does not impose restrictions on any other industry. Even more concerning is that the CC Law does not apply to all internet platforms. This regulation parallels the discrimination between types of magazines in Arkansas Writers' Project, Inc. v. Ragland. Just as the court in Ragland found that the government's proposed interest for implementation was undermined by uneven application, this Court should find that the state's interest for implementing the CC Law is not compelling. This discriminatory application to only "certain large digital platforms" is not explained by the state's argument that Poster is considered a common carrier as monopoly status is not required to designate common carriers. R. at 1. Moreover, the CC Law is significantly underinclusive to achieve the interest of viewpoint neutrality as it only applies to select platforms. Accordingly, this Court should find that the CC Law fails to satisfy strict scrutiny as it lacks a compelling state interest and is not narrowly tailored to achieve such interest.

IV. This Court should find that the CC Law violates Poster's First Amendment right to free exercise of religion because it is neither neutral nor generally applicable and does not withstand strict scrutiny.

The CC Law violates the Free Exercise Clause of the First Amendment. The First Amendment of the United States Constitution provides, "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof* . . . ." U.S. Const., amend. I. (Emphasis added.) This right has been incorporated to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296 (1940). The core of the right to free exercise is "the right to believe and profess whatever religious doctrine one desires." Employment Div. v. Smith, 494 U.S. 872, 877 (1990).

Until 1990, the prevailing test in this Court's free exercise jurisprudence was Sherbert strict scrutiny review. Sherbert v. Verner, 374 U.S. 398, 406 (1963). Sherbert v. Verner held that a law substantially burdening religious exercise must be narrowly tailored to serve a compelling government interest. Id. The Court later clarified its approach to free exercise claims in Employment Div. v. Smith. It held that law that is both neutral and generally applicable need not be subjected to strict scrutiny. Smith, 494 U.S. at 888. In doing so, the Smith court was clear that cases like Sherbert, which applied strict scrutiny review to free exercise claims, were not overruled. Id. at 881-82. Rather, strict scrutiny is still appropriate when: (1) a law is not neutral or generally applicable; or (2) when a free exercise challenge involves a "hybrid situation" in which the Free Exercise Clause is violated in conjunction with another constitutional claim. Id.

In this case, the Court should subject the CC Law to strict scrutiny review because it is neither neutral nor generally applicable. And even if the Court holds that the CC Law is neutral and generally applicable, it should nonetheless apply strict scrutiny because this is a hybrid rights claim. The CC Law does not withstand strict scrutiny because it is not the least restrictive means of achieving a compelling government interest. For these reasons, this Court should affirm the decision of the Fifteenth Circuit Court of Appeals.

A. This Court should apply strict scrutiny because the CC Law is neither neutral nor generally applicable.

Because the CC Law does not satisfy the requirements of Smith, it must withstand strict scrutiny review. A law "incidentally burdening" religion that is both neutral and generally applicable need not undergo strict scrutiny. Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 540-41 (1993). A law lacks neutrality if its object is to target religion. Id. Further, a law lacks generally applicability if there if it provides a formalized mechanism for individualized exceptions. Id.

Here, the CC Law's two relevant provisions lack both neutrality and general applicability. R. at 20. The CC Law targets religion by overtly referring to religion in both its serve-all clause and its no-contribution clause. R. at 20. It also exhibits hostility toward Respondent's religious beliefs in operation. The CC Law lacks general applicability because of the wide latitude it gives Petitioner to unilaterally decide who falls within its auspices. R. at 20.

1. The CC Law is not neutral because it targets religious practice in both text and operation.

The CC Law lacks neutrality because it targets religion. Under the Smith framework, government fails to act neutrally when it "proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." Fulton v. City of Philadelphia, 141 S. Ct. 1868, 1877 (2021). There are many ways to determine if a law departs from neutrality. Lukumi, 508 U.S. at 533. While facial neutrality is the proper place to start the analysis, a lack of facial neutrality is not dispositive. Id. Facial neutrality is the "minimum requirement." Id. It is necessary to investigate how a law operates. Id. (Holding that the Free Exercise Clause "forbids subtle departures from neutrality," and "covert suppression of particular religious beliefs.")

a. Facial neutrality

A statute lacks facial neutrality "if it refers to a religious practice without a secular meaning discernible from the language or context." Id. In Church of Lukumi Babalu Aye v. City of Hialeah, the Court found that three ordinances' use of the words "sacrifice" and "ritual" was not facially discriminatory. Id. Though the Court eventually found that the ordinances operationally departed from neutrality, they were facially neutral because they defined the terms without any reference to religion. Id.

In this case, unlike the ordinances in Lukumi, the CC Law is facially discriminatory because it refers explicitly to religion in multiple places. R. at 20. The CC Law's no-contribution

provision requires regulated parties to "refrain from using corporate funds to contribute to political, *religious*, or philanthropic causes." R. at 20 (Emphasis added.) And the serve-all clause requires that regulated parties "shall serve all who seek or maintain an account, regardless of political, ideological, or *religious* viewpoint." R. at 20. (Emphasis added.) In each of these clauses, religion is singled out as one of only three prohibited areas. Regulated parties would be free to moderate content or donate to causes for an infinite number of other reasons; but because of targeting by the overt language of the statute, those regulated parties cannot remove content for religious reasons or donate to religious causes.

b. Operational neutrality

While the Court could conclude its neutrality analysis here based on the CC Law's facial hostility toward religion, it should also recognize the CC Law's operational targeting of religious practice. This Court has been clear: the fact that a law is merely facially neutral is not enough to save it. Lukumi, 508 U.S. at 533. The Free Exercise Clause goes further, and guards against "subtle departures from neutrality." Id. In Lukumi, such was the case. Id. The animal sacrifice ordinances at issue were not facially discriminatory, but they nonetheless departed from neutrality in operation because they had the effect of targeting religious animal sacrifice. Id.

Additionally, a decision-making body's expressions of hostility toward religion or religious practices indicates targeting. Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719, 1731 (2018). In Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, the Court found that the government departed from neutrality when it penalized a baker for refusing to sell wedding cakes to same-sex couples. Id. Officials had convened publicly to consider the baker's refusal after media uproar surrounded the baker and openly disparaged the baker's religious beliefs. Id. The Court pointed out that other bakeries had refused to bake for

same-sex couples for non-religious reasons and were not penalized by the government. Id. at 1721 ("Another indication of hostility is the difference in treatment between [the challenger's case] and the cases of other bakers who objected to a requested cake on the basis of conscience and prevailed . . . .").

The case at bar presents similar facts to Masterpiece Cakeshop. Just like the anti-discrimination statute in Masterpiece Cakeshop, the CC Law has been selectively enforced based on Respondent's religious beliefs. This is the first and only time that Petitioner has ever enforced the CC Law. R. at 23. Ms. Thornberry protested her account suspension and widely publicized the details of the suspension. R. 22-23. And it was only after media coverage was sparked by Ms. Thornberry's appearance on national television that Petitioner took action to enforce the CC Law. R. at 22-23. Just like the officials in Masterpiece Cakeshop made disparaging remarks toward the challenger's religious beliefs in that case, the Petitioner here made clear that it was the "*APC-founded* Poster platform" that was "discriminating against Delmont citizens based on *their* political viewpoints." R. at 23 (Emphasis added.) Therefore, the CC Law is not neutral.

2. The CC Law is not generally applicable because it provides a formalized mechanism for individualized exceptions.

The crux of Smith's general applicability requirement is that government cannot selectively impose burdens on religion or religious viewpoints while allowing secular conduct that harms the government's interests in a similar way. Fulton, 141 S. Ct. at 1873.

A law cannot be generally applicable if it creates a "mechanism for individualized exceptions," allowing the government to inquire into the reasons underlying the conduct at issue. Id. In Sherbert, the case Smith identifies as a key example of a law that is not generally applicable, the Court addressed the constitutionality of a statutory scheme providing that a person was ineligible for unemployment benefits if they quit work "without good cause."

Sherbert, 374 U.S. at 401. The "good cause" language was so ambiguous that it effectively allowed the government to provide selective exemptions. Id. Likewise, in Fulton v. City of Philadelphia, the Court analyzed a statutory scheme which provided that foster care agencies were not allowed to reject families "unless an exception is granted by the Commissioner or the Commissioner's designee, in his/her sole discretion." Fulton, 141 S. Ct. at 1873. This type of mechanism, the Court held, defeats general applicability. Id.

Moreover, laws that are underinclusive in achieving their stated interests are not generally applicable. Id. at 1877. In other words, if a law prohibits religious conduct for a stated purpose, it cannot permit secular conduct of a similar nature that undermines that purpose. Id. In Lukumi, the Court held that the city ordinances prohibiting animal sacrifice were not generally applicable because the city failed to bar "[m]any types of animal deaths or kills for nonreligious reasons . . . ." Lukumi, 508 U.S. at 543. The ordinances proscribed animal killing for the purpose of religious sacrifice, but allowed it in secular contexts like hunting. Id.

The CC Law, like the statutory schemes in Sherbert and Fulton, creates a formal mechanism by which a government official can choose when to enforce it. R. at 20. Just as the Fulton statute provides undefined catch-all language inviting a government official to exercise discretion, so too does the CC Law. R. at 3. The CC Law provides only that internet platforms with "substantial market share" fall within its ambit. R. at 3. It does not define "substantial market share." R. at 20. The lack of specificity effectively provides Petitioner—the Attorney General and his designees—carte blanche to pick and choose which internet platforms fall are subject to regulation. R. at 6. The fact that this is the first time that CC Law has been enforced at all is further evidence of Petitioner's selective enforcement. R. at 6. The law was enacted in June

of 2020 and sat dormant for over 14 months until Petitioner disapproved of the content of Respondent's actions and the religious motivation underlying them. R. at 5-6.

Additionally, just like the ordinances in Lukumi, the CC Law permits secular conduct that undermines the government's asserted interest in the same way as Respondent's actions, specifically relating to the no-contribution provision. If it is true that the government's interest here is preventing platforms from favoring one viewpoint with their monetary contributions, the provision should be broader. R. at 35. Platforms are free to donate to any causes that are not political, religious, or philanthropic. R. at 20. Because a wide array of secular conduct that undermines the state interest in a similar way is left alone, general applicability is defeated.

B. Even if this Court holds that the CC Law is neutral and generally applicable, it should apply strict scrutiny because this is a "hybrid rights" claim.

The CC Law must be subjected to strict scrutiny even if it is neutral and generally applicable. Laws that burden "hybrid rights"—such as the rights of free exercise and free speech in tandem—are exempt from Smith's "neutral and generally applicable" analysis and must pass muster under the Sherbert strict scrutiny test. See Smith, 494 U.S. 872, 881-82.

Wisconsin v. Yoder laid the groundwork for the hybrid rights doctrine. See Wisconsin v. Yoder, 406 U.S. 205 (1972); Smith, 494 U.S. 872, 881. In Yoder, Amish parents challenged a state statute requiring children to attend school until age sixteen under both the Free Exercise Clause and the Fourteenth Amendment. Id. The Court applied the strict scrutiny test and held that the law violated the parents' combined rights of free exercise and parenting. Id.

Smith carefully carved out an exception to its holding that neutral and generally applicable laws need not undergo strict scrutiny. Smith, 494 U.S. at 881-82. Rather than overruling the Sherbert test, it made clear that strict scrutiny analysis is still proper in "hybrid situation[s]" in which a challenger claims that state action has violated its free exercise right in conjunction with

another constitutional right. Id. In Smith, the Court applied rational basis review to the neutral and generally applicable law at issue only because the case "[did] not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity."

The "hybrid rights" carve-out in Smith is not mere dicta. See Fulton, 141 S. Ct. at 1914-15 (Barrett, J., concurring) ("Other than cases involving rules that target religious conduct, the Sherbert test was held to apply to . . . so-called 'hybrid rights' cases.") Though Smith itself dealt with a non-hybrid claim, the Court evaluated its entire free exercise jurisprudence and analyzed the status of numerous cases, like Sherbert and Yoder. Smith, 494 U.S. 872. And the Court explicitly declined to overrule those cases, stating that Sherbert still applies in hybrid situations. Id. at 881-82. As the Eighth Circuit points out in Telescope Media Grp. v. Lucero, "Smith did more than simply speculate about how to treat a hybrid claim in some hypothetical future case. Rather, it described the operation of an existing doctrine, one that it then applied to the parties." Telescope Media Grp. v. Lucero, 936 F.3d 740, 759-60 (8th Cir. 2019).

In this case, Respondent presents two constitutional claims that are intertwined. R. at 23. In addition to its free exercise challenge, Respondent brings a claim that the CC Law violated its First Amendment right to free speech. R. at 23. The same state action—Petitioner's enforcement of provisions of the CC Law—violated Petitioner's hybrid rights of free exercise and free Speech. R. at 23. And for that reason, this Court should apply Sherbert strict scrutiny.

C. The CC Law does not pass muster under strict scrutiny because it is not narrowly tailored to serve a compelling government interest.

The CC Law does not withstand strict scrutiny because it is not the least restrictive means to serve a compelling state interest. In 1963, in Sherbert, the Court articulated a new strict scrutiny standard for Free Exercise claims Sherbert, 374 U.S. at 402-403. As a threshold matter, a religious objector must first demonstrate that a law substantially burdens their religion. Id. If they

successfully do so, the opposing party then has the burden of showing that the law (1) serves a compelling state interest and (2) is the least restrictive means available to achieve that interest. Id. This strict scrutiny test is extremely rigorous, and the Court has been clear that laws targeted at religion "will survive strict scrutiny only in rare cases." Lukumi, 508 U.S. at 546. Here, if this Court applies strict scrutiny, the CC Law does not meet these criteria. Initially, the CC Law substantially burdens Respondent's religious exercise both by requiring Respondent to violate its own religious beliefs or face hefty fines. R. at 20. Further, neither the serve-all provision nor the no-contribution provision are narrowly tailored to serve any compelling government interest.

1. The CC Law substantially burdens Poster's exercise of religion.

As a threshold matter, Petitioner substantially burdened Respondent's exercise of religion by enforcing the CC Law. The heavy fines that Petitioner inflicted—35% of daily profits—force Respondent to choose between its exercise of religion and following the law. R. at 3.

Corporations have the right to free exercise of religion in the same way that natural persons do. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 710-12 (2014). And their religious exercise can be substantially burdened in the same way that a natural person's can. Id. In Braunfeld v. Brown, the Court heard the free exercise claims of retail merchants. Braunfeld v. Brown, 366 U.S. 599 (1961). The Court was clear that the merchants' profit-seeking objective did not present any obstacle to their claim for relief. Id. Similarly, in United States v. Lee, the Court held that Amish employers' religious practice was burdened by their forced participation in the social security system. United States v. Lee, 455 U.S. 252 (1982). And later, in Burwell v. Hobby Lobby Stores, Inc., the Court relied on Braunfeld and Lee to make the same pronouncement. Hobby Lobby Stores, Inc., 573 U.S. 682 (holding that daily fines levied by a

government agency against a corporation constituted a substantial burden and declining to entertain arguments the corporation could have avoided fines by dropping insurance coverage.)

Here, the burden that Petitioner's enforcement of the CC Law imposes on Respondent's religious exercise is immense. Respondent has a sincerely held religious belief in pacifism. R. at 19. It was founded and is run by members of the APC, with a central tenet of non-aggression. R. at 19. The fines that Petitioner has levied on Respondent via the CC Law's serve-all provision for refusing to publish violent language—like the fines at issue in Hobby Lobby—impose a choice upon Respondent. R. at 19. It can choose to avoid fines by publishing material that directly infringes upon its beliefs, or it can follow its beliefs and see 35% of its daily business profits taken away. R. at 19. The CC Law also substantially burdens Respondent's religious exercise through its no-contribution provision. One of the core ways in which the APC practices its religion is through philanthropy. R. at 19. The no-contribution provision eliminates Respondent's ability to use corporate funds for religious or philanthropic causes entirely. Respondent can either engage in philanthropic efforts like establishing lending libraries in poor communities or comply with the law. R. at 19. For this reason, the CC Law imposes a substantial burden.

2. The CC Law does not advance any compelling government interest.

Neither the no-contribution provision nor the serve-all provision of the CC Law serves a compelling government interest. To pass muster under strict scrutiny, the government has the burden of establishing that it has a compelling government interest that justifies substantially burdening Respondent's religious exercise. Sherbert, 374 U.S. at 406. In order for an interest to be compelling, it must be related to the prevention of some grave abuse. Id.

The Court must "loo[k] beyond broadly formulated interests" and to "scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants." Hobby Lobby Stores, Inc., 573 U.S. at 726-27. In Hobby Lobby, the Court applied this principle when it found that the government agency's broadly stated interests in "public health" and "gender equality" were not specific enough to satisfy the compelling interest inquiry. Id.; See also Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 546 U.S. 418, 428 (2006), The Court followed the same analytical framework in Fulton, pointing out, "The question . . . is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to [the challenger]." Fulton, 141 S. Ct. at 1873.

Moreover, the government cannot have a compelling interest in avoiding litigation alone. Shaw v. Hunt, 517 U.S. 899, 951 n.4 (1996). In Shaw v. Hunt, the Court addressed the argument that the government avoiding unpleasant and costly litigation was compelling. Id. The majority stated that this interest "sweeps to broadly" and that the government has the burden of showing a "strong basis in evidence," for believing that it is violating the law without the measure at issue. Id. The government has no compelling interest "in avoiding meritless lawsuits." Id.

In this case, the the CC Law's statement of intent directly states that the no-contribution provision was included to avoid litigation over potential Establishment Clause violations. R. at 20. And just like in Shaw, this isn't enough; Petitioner has not shown more than an abstract interest in avoiding Establishment Clause violations. R. at 20. There is no indication that the CC Law without the no-contribution provision would violate the Establishment Clause, nor is there any indication that any litigation was initiated or even threatened by any group. R. at 20.

As for the serve-all provision, Petitioner asserts an interest in "bolster[ing] free speech." R. at 34. This interest—like the interests in "public health" and "gender equality" in Hobby

Lobby—sweeps too broadly. And just like in Fulton, the specific question is not whether the government has this broad interest, but whether it has an interest in denying an exemption to Respondent. Petitioner has not demonstrated that declining to exempt Respondent prevents any grave abuse. While Respondent suspended Ms. Thornberry's account, it made clear that she could regain access to her account as soon as she revised her title. R. at 22. If she selected words less violent than "Blood is Blood," she could carry on using Respondent's platform immediately. R. at 22. And further, this is only the second time that Respondent has ever suspended an account. R. at 22. There is simply no evidence that Respondent is abusing its User Agreement by haphazardly suspending every account with which it disagrees. R. at 22. Therefore, the state has no compelling interest in enforcing the serve-all provision of the CC Law against Respondent.

3. The CC Law is not narrowly tailored.

Even if the Court finds that the CC Law serves a compelling government interest, it is not the least restrictive means to achieve that interest. The government has the burden of demonstrating that "it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting parties in these cases." Hobby Lobby Stores, Inc., 573 U.S. at 728.

The least-restrictive-means analysis necessarily involves an inquiry into possible alternatives. Id. In Hobby Lobby, the Court found that the Affordable Care Act's requirement that a religious employer fund contraceptive coverage for its employees was not narrowly drawn. Id. at 730. It pointed to the availability of an alternative: the government assuming the costs of contraceptives for women whose employers would not cover them due to religious objection and require employers to pay additional fee for doing so. Id. at 730-31.

Here, the CC Law's serve-all provision and no-contribution provision both fail the least restrictive means test. As for the serve-all provision, Petitioner could have passed the same provision with a caveat that a platform has the option to moderate content virulently offending its core religious tenets. This bolsters free speech by providing equal access to the marketplace and prohibiting platforms from frivolously excluding content they disagree with. But it also alleviates the burden on Respondent. Like the alternative available to the government in Hobby Lobby, this is a less restrictive choice that advances the government's interest.

The no-contribution provision of the CC Law lacks narrowly tailoring due to its overbreadth. Because it prohibits *all* corporate donations to philanthropic causes, it burdens a large degree of conduct that does not harm the government's interests at all. And though the government's interest here is nothing other than avoiding Establishment Clause litigation, if the Court accepts the governor's statement that the interest here is in preventing websites from favoring a particular viewpoint, this provision does little to advance it. Barring a website like Respondent from establishing lending libraries in poor communities and engaging in other philanthropic activity has no connection whatsoever to ensuring the Respondent does not "favor" certain viewpoints. Therefore, CC Law's prohibitions are not narrowly tailored to achieve a compelling government interest, and the Court should find them unconstitutional.

CONCLUSION

As set forth above, Respondent respectfully requests that this Court find that the Delmont Common Carrier Law violates Poster's rights of free speech and free exercise guaranteed by the First Amendment.

APPENDIX A: CONSTITUTIONAL PROVISIONS AND RELEVANT STATUTES

This case involves the Free Speech Clause of the First Amendment to the United States Constitution, which provides: "Congress shall make no law . . . abridging the freedom of speech" U.S. Const. amend. I.

This case also involves the Free Exercise Clause of the First Amendment to the United States Constitution, which provides: "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof* . . . ." U.S. Const., amend. I. (Emphasis added.)

Additionally, this case involves the State of Delmont's Common Carrier Law, Delmont Rev. Stat. § 9-1.120(a), which provides in relevant part that internet platforms with substantial market share "shall serve all who seek or maintain an account, regardless of political, ideological, or religious viewpoint," and requires that common carriers "refrain from using corporate funds to contribute to political, religious, or philanthropic causes."

BRIEF CERTIFICATION

In accordance with the Official Rules of the 2021 Seigenthaler-Sutherland Moot Court Competition, we hereby submit this certificate of compliance to certify that:

(i) The work product contained in all copies of this team's brief is in fact the work product of the team members, and only the team members;

(ii) The team has complied with the governing honor code of our school; and

(iii) The team has complied with all Rules of the Competition.

Respectfully Submitted,

/s/ Team 024

Team 024

Counsel for Respondent

January 31, 2022