No. 2025-CV-1994

IN THE
SUPREME COURT OF THE UNITED STATES

CHURCH OF LIGHT, LLC,

Petitioner,

v.

LAURA MARSHALL,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR PETITIONER

TEAM 11
Counsel for Petitioner

February 6, 2026

QUESTIONS PRESENTED

I. Does the Campus Anti-Doxxing Statute (CADS) violate the First Amendment Free Speech rights of The Church of Light, LLC?

II. Does the Campus Anti-Doxxing Statute (CADS) violate the First Amendment Free Exercise rights of The Church of Light, LLC?

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The opinion of the United States District Court for the District of Delmont, Western Division, is unpublished and may be found in Marshall v. Church of Light, C.A. No. 25-CV-1994 (D. Delmont Dec. 8, 2025). R. at 2–29. The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found in Marshall v. Church of Light, C.A. No. 25-CV-1994 (15th Cir. Dec. 29, 2025). R. at 30–43.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment in favor of the Respondent Laura Marshall on December 29, 2025. R. at 43. Petitioner then timely filed a writ of certiorari, which this Court granted. R. at 50. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Church of Light (the Church) was formed in the nineteenth century when Uriah Webster, a Delmont newspaper mogul, claimed he had received a divine commission to establish an itinerant church. R. at 8. This Church from its early days proselytized by public proclamation and printed witness, and its members, the "Lightbearers," believe that the foundational dimension of practicing their faith is the personal, live, and public proclamation of their religious message. *Id.* This witness must then be extended through a communicative format, such as the printing press. *Id.*

The first generation of Lightbearers proclaimed their witness via a church publication called *The Lantern*, which covered local news along with religious tracts. *Id.* It was this combination

that made *The Lantern*, and the Church, successful: people came to rely on the publication for free access to news. *Id.*

As the Church has grown, *The Lantern*'s importance has remained, but now it is primarily the responsibility of young Lightbearers to disseminate the publication and proselytize the faith. R. at 9. This responsibility gives the young Lightbearer the opportunity to solidify his faith in the Church while serving its needs, so it is the duty of every Lightbearer to spend a year on mission before they reach 23 years of age. *Id.*

A question arose about what the Church would do when the prevalence of print media waned. R. at 9. Unlike other newspapers, *The Lantern* could not simply move online: this would violate the obligation that the religious witness be live, personal, and public. *Id.* The Church decided it could accommodate the digital world and remain faithful to its doctrine by using live TV broadcasts of *The Lantern* on community access channels created by Lightbearer Missionaries in studios on college campuses, where the missionaries were spending their mission years. *Id.* The format for *The Lantern* stayed the same–live religious programming and local news–and it gradually transitioned from TV broadcasts to internet livestreams as those became the dominant method of live presentation. *Id.* The most recent development in their missionary techniques is to drive vans around their campuses bearing high-definition LED screens on the sides. *Id.* The screens provide local news, information, Lightbearer live-streamed broadcasts, weather, event calendars, and the like. R. at 9-10. The Lightbearer Missionaries take shifts during the week driving the vans about, parking outside popular campus areas, and standing alongside the vans to field questions. R. at 10. It was these vans that embroiled the Church in this controversy.

In 2024, the Delmont Legislature debated whether to convert a thousand undeveloped acres into zones for solar and wind energy production. R. at 4. Delmont is a state with vast environmental attractions, and these have indeed attracted many groups invested in protecting them. *Id.* The debates in the legislature spawned further debates in the public square, with two opposing sides coalescing: the "Energy Coalition," which was in favor of the energy farms; and the "Nature Coalition," which opposed the farms and sought to preserve the natural habitats. R. at 5.

The controversy became heated quickly, especially on college campuses. *Id.* The two sides had strong supporters among students and faculty, and this resulted in mayhem such as libraries being stormed by activists, classes being interrupted, administrators' homes being protested, and students being accosted at home. *Id.* Things escalated further when students were hospitalized and began receiving intimidating calls on their personal phones, and police realized that this was happening because of "doxxing." R. at 6.

Doxxing is the publishing of someone's private information (such as their name, home address, phone number, etc.) to intimidate them, and the Delmont police discovered that doxxing was proliferating at Delmont college campuses. *Id.* In response, the Delmont state legislature passed the "Campus Anti-Doxxing Statute of Delmont" ("CADS"), Delmont Annotated Statutes §25.989 (2025). *Id.* This law created a private right of action against any individual who without consent uses a communication platform of any type to disclose private information of an enrolled student, faculty member, administrative or staff member at a Delmont college or university with the intent to "stalk, harass, or physically injure." *Id.* Private information includes things like "the plaintiff's home address, personal email address, personal phone number, social security number,

or any other personally identifiable information." R. at 7. The courts have already granted relief to two plaintiffs using this law. *Id.*

This law is relevant to the Church because its student chapter at Delmont State University (DSU) is affiliated with the Energy Coalition, and in its van broadcasts it mixes in objective news coverage of the Controversy along with editorialized videos defending the Energy Coalition position. R. at 10.

On the week of September 22, 2025, DSU Lightbringers broadcasted a video clip of a DSU student Laura Marshall, who was a vocal activist for the Nature Coalition. *Id.* In the clip, Marshall is seen delivering a forceful speech during a campus protest and immediately following the clip the vans displayed a photograph of Marshall. *Id.* In this photograph, Marshall is seen sitting at the front desk of Delmont Treatment Center, a non-profit that assists those suffering from substance abuse. *Id.* It is located five blocks from DSU. *Id.* In the picture, the name of the center was clearly visible in a logo behind Marshall. *Id.* The text in the photo included the address, phone number, and hours of operation for the Center. *Id.*

The video and photograph were shown multiple times a day throughout the week by the vans on DSU's campus. *Id.* Within 24 hours of the video appearing on the vans, Marshall was confronted by 20 people in ski masks and Energy Coalition shirts, who photographed, catcalled, and insulted Marshall about her substance addictions. *Id.* To add injury to insult, the group keyed her car, and the subsequent night she damaged her car further trying to escape the group. *Id.*

To protect herself, the Center, and the Center's patients, Marshall felt compelled to quit her job at the Center's front desk and withdraw from counseling. R. at 12. On October 3, 2025, Marshall filed suit in the United States District Court for the District of Delmont, Western Division, under CADS against the Church of Light for damages and injunctive relief, alleging

that she was injured because of the Church doxxing her. *Id.* The Church eventually moved for summary judgment on the grounds that, as applied to the Church here, CADS violates the First Amendment's protections of free speech and free exercise of religion. *Id.*

The district court granted the Church's motion for summary judgment, agreeing with the Church that CADS would violate the Church's free speech and free exercise rights if it were applied to the Church in this factual scenario. R. at 29. Marshall appealed this decision to the United States Court of Appeals for the Fifteenth Circuit, which reversed the district court and denied the summary judgment motion, holding that CADS did not violate the First Amendment. R. at 43.

Finally, the Church filed a petition for certiorari, which this Court granted. R. at 50.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Fifteenth Circuit because CADS, as applied, would violate the Church of Light's Right to Free Speech. Laws abridging the Freedom of Speech must pass muster under the tiers of scrutiny, and CADS implicates strict scrutiny for three reasons. First, CADS proscribes the Church's broadcasts, which constitute political speech on a matter of public concern at the core of the First Amendment.[1] Second, CADS prohibits speech on the basis of its content. Third, CADS proscribes the publication of truthful information, lawfully obtained from public sources. Finally, Marshall cannot escape strict scrutiny because the Church's broadcasts do not fall into any of the historical categories of speech excluded from First Amendment protection.

[1] This type of expression at least merits strict scrutiny, though the Court has held laws abridging the right to this expression *per se* impermissible. *See* discussion *infra* Section I.A.

Moreover, this Court should reverse the Fifteenth Circuit because CADS also violates the Free Exercise Clause. Burdens on religious exercise must satisfy strict scrutiny unless they arise under the operation of neutral laws of general applicability according to *Employment Division v. Smith*. Strict scrutiny is triggered for three reasons. First, the burden on religious exercise here falls outside *Smith*'s scope as an interest of special character and as a hybrid right, specifically the right to religious speech recognized in *Cantwell* and explicitly preserved in *Smith*. Second, *Smith* is not implicated because CADS is not neutral; Delmont failed to acknowledge the effect it would have on a large and prominent segment of its society, the Church of Light, and the Governor ignored the Church's lobbying efforts. Third, even if the law is neutral and generally applicable, and even if this is not a hybrid rights case, strict scrutiny should still be applied because *Smith* should be overruled.

For her suit to survive, Marshall must show that CADS is justified by a compelling state interest and that it is narrowly tailored to further that interest. She cannot. Although protecting the immediate health and safety of individuals from doxxing is a compelling interest, CADS is not narrowly tailored to survive scrutiny. First, the law's definition of "private information" is overbroad such that it includes information that the Church has a constitutional right to publish and underinclusive so as to not address the government interest. Second, anti-stalking laws and harassment laws provide less restrictive alternatives to achieve the end.

Because CADS fails strict scrutiny, this Court must reverse the Fifteenth Circuit.

ARGUMENT

I. Delmont has unconstitutionally burdened Church of Light's free speech rights

The First Amendment states "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. Amend. I. The Free Speech Clause was incorporated against the states

through the due process clause of the Fourteenth Amendment.[2] *Gitlow v. People of State of New York*, 268 U.S. 652, 666 (1925). CADS abridges the Church of Light's freedom of speech in a content-based manner that prohibits political speech at the core of this right. *See Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011).

A. CADS triggers strict scrutiny by restricting political speech about matters of public concern

At the heart of the First Amendment is the right to speak on matters of political and public concern. *Snyder*, 562 U.S. at 451-52. When laws abridge this right, courts have held such laws *per se* impermissible. *Id.* In determining whether speech concerns a public matter, the Court has looked to the content, form, and context of the speech as revealed by the whole record. *Id.* at 453. Speech regards a matter of public concern when "it can be fairly considered as relating to any matter of political, social, or other concern to the community . . . or when it is a subject of significant news interest and of value or concern to the public." *Id.* at 453 (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1988)) (cleaned up). In *Snyder*, the Court emphasized that the Westboro Baptist Church picketers were protesting on a "public street," and had "a prior history of speaking on the same subject matter" before forming any relationship with the plaintiff. *Snyder*, 562 U.S. at 455-56. Whether speech is "inappropriate or controversial" is irrelevant in deciding whether it deals with a matter of public concern. *Id.* at 453.

The Church's broadcast met this standard. Marshall delivered her speech in public at Delmont State University during a large Nature Coalition protest—an event other news outlets

[2] The method of incorporation against the states is irrelevant to the result of the case and would yield an identical holding under the privileges and immunities clause. *See McDonald v. City of Chicago*, 561 U.S. 742, 832 (2010) (Thomas, J., concurring in part).

covered. R. at 12. Broadcasting this clip facilitated public debate and kept the Delmont community informed of important developments in the Energy Farm Controversy. The form and context of the Church of Light's broadcast is also analogous to *Snyder*. The Court emphasized the picketers were protesting on a "public street," and had "a prior history of speaking on the same subject matter" before forming any relationship with the plaintiff. *Snyder*, 562 U.S. at 455-56. Marshall's speech was delivered in a public forum and was disseminated on the public streets and spaces via community access channels and the Lightbearer Missionary vans. R. at 10; 45. *The Lantern* had previously covered speeches from both coalitions before any relationship with Marshall existed. R. at 12. This demonstrates the Church's routine practice of publishing relevant and newsworthy information, rather than targeting Marshall personally. The overall nature of these circumstances confirm that Marshall's speech was indeed a subject of interest and value to the public.

Similarly, information about drug abuse treatment resources concerns a matter of public value. *The Lantern* displayed a list of resources for those suffering from substance abuse. R. at 10. Alongside the list was a picture of Marshall sitting at the front desk of the Delmont Treatment Center—comparable to another photo of St. John's Church Counseling Center. R. at 10. Even if some consider this inclusion inappropriate, inappropriate or controversial topics are nevertheless afforded First Amendment protection under the *Snyder* framework. *Id.* at 453. Because CADS restricts speech related to a matter of public concern, it merits special protection under the First Amendment and is *per se* unconstitutional as applied to the Church.

B. CADS triggers strict scrutiny by facially imposing liability based on the content of speech

CADS is *per se* impermissible under the First Amendment's special protections for political speech on matters of public concern. However, even if that were not the case, CADS violates the First Amendment because it regulates speech on the basis of its content.

This Court holds that "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 v. Town of Gilbert*, 576 U.S. 155, 163 (2015). A law is content based when it "singles out specific subject matter for different treatment," *Id.* at 169, including regulations that regulate speech based on "its function or purpose." *Id.* at 163; *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011) (Holding the dissemination of information is speech, and that restrictions targeting specific categories of information are content based). The Court has consistently held that content-based laws are "presumptively unconstitutional" and must survive the high demands of strict scrutiny. *Reed*, 576 U.S at 163.

Under *Reed*, CADS is facially content-based. CADS applies liability by scrutinizing the content and purpose of a speaker's communication. Indeed, it restricts speech when it contains a particular subject matter: personally identifiable information. R. at 6. and it only restricts speech when it contains a particular subject matter: personally identifiable information. R. at 6. Consequently, CADS triggers strict scrutiny.

C. CADS triggers strict scrutiny by restricting truthful information lawfully obtained from public sources

The Court has long recognized that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." *The Fla. Star v. B.J.F.*, 481 U.S. 524, 533 (1989) (quoting *Smith v. Daily Mail Publ'g Co.*, 443 U.S.

97, 103 (1979)). This principle reflects the "sensitivity and significance of the interests presented in clashes between the First Amendment and privacy rights." *Id.* at 533. The Court held that publishers cannot be punished for broadcasting lawfully obtained information about public matters, even if originally obtained illegally by others. *Bartnicki v.* Vopper, 532 U.S. 514 (2001).

Here, all of the content broadcasted by the Church was obtained lawfully from public sources. The Church recorded a public delivered speech that other news outlets also covered. R. at 10. Marshall's photo came from the Delmont Treatment Center's website. R. at 45. The information was truthful: Marshall's own words, and accurate treatment centers contact information. *The Lantern* operates as a news publisher with a history of conveying newsworthy information. R. at 8-9. Therefore, CADS triggers strict scrutiny by unduly restricting the Church's ability to publish truthful information, lawfully obtained, about a matter of public concern.

D. The Church's broadcast is not excluded under any category of historically unprotected speech

Delmont may not regulate speech in a content-based manner unless it is categorically excluded. *United States v. Stevens*, 559 U.S. 460, 460 (2010).[3] The Church's expression is neither intended to cause a reasonable fear of bodily harm, nor is it intended to incite imminent and lawless action from third parties.

1. True Threats

The Fifteenth Circuit characterized the Church's broadcast as a "true threat" against Marshall. True threats are "statements where the speaker means to communicate a serious

[3] Identifying obscenity, defamation, fraud, incitement, and speech integral to facilitating criminal conduct as historically unprotected categories of speech

expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Virginia v. Black*, 538 U.S. 343, 359 (2003). The state must prove at least recklessness: awareness "that others could regard his statement as threatening violence" and a "deliberate decision" to disregard that risk. *Counterman v. Colorado*, 600 U.S. 66, 78-79 (2023).

Here, the Church of Light had no subjective understanding or intention that its broadcast would be viewed as threatening violence. The actual broadcast itself contained nothing but truthful information already available to the public. R. at 45. There is no language threatening harm to Marshall, no call to action against Marshall, no language directly identifying Marshall, nor any violent or menacing imagery or symbolism. Absent any menacing context, the broadcast cannot be construed as a serious expression of intent to harm. Given the wider circumstances of the Energy Farm Controversy, the respondent may argue that the Church of Light was at least reckless to provide an address for her place of work after showcasing her vehement zeal for the Nature Coalition's cause. The broadcast's purpose, however, cannot be construed as insidious when considering the past and customary actions of *The Lantern* as a publisher. *The Lantern* had and would often showcase speeches from both coalitions and routinely provided lists of valuable community resources. R. at 12. These are legitimate and routine journalistic practices, and not a conscious disregard of potential harm.

2. Incitement

The Court has held that advocating for the use of force or illegal conduct cannot be punished, "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1960).

The clip of Marshall's speech and the photograph contain no call to action whatsoever to engage in unlawful conduct. R. at 10-11. Providing information to the public is a clear distinction

from guiding, instructing, and encouraging certain conduct from a specific audience. The first instance of harassment happened 24 hours after the broadcast, but the broadcast itself specified no definite time for action. R. at 11. While third parties ultimately broke the law, the target audience Delmont's general public. Considering other publications covered the controversy, lawless action was unlikely given all the circumstances.

In *NAACP v. Claiborne Hardware Co.*, the Court held that publicizing information to socially ostracize remains protected by the First Amendment. *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886 (1982). The NAACP published boycott violators' names for explicit social ostracism despite subsequent harassment and property damage. *Id.* at 904, 927.

Marshall hinges her argument on the fact that the Church of Light supports the Energy Coalition while Marshall supports the Nature Coalition. R. at 10. The argument follows that the Church of Light used their broadcast as a mere pretense to target Marshall as a political and ideological opponent. R. at 12. However, if the NAACP's extreme ostracization was protected, the Church's broadcast certainly was. Therefore, the Church's broadcast cannot be construed as inciting imminent lawless action.

II. Delmont has unconstitutionally burdened the Church's Free Exercise

The First Amendment states that "Congress shall make no law . . . prohibiting the free exercise [of religion]". U.S. Const. Amend. I. (cleaned up). This provision was incorporated against the states by the due process clause of the fourteenth Amendment.[4] *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940). Under the First Amendment, laws that burden religious interests with a special character, or that burden both religious exercise and another

[4] The method of incorporation under the Fourteenth Amendment is not relevant to the argument put forth. *See Mahmoud v. Taylor* (Thomas J. concurring) (reaching an identical holding while applying the privileges or immunities clause of the Fourteenth Amendment.)

constitutional right are subject to strict scrutiny. *Mahmoud v. Taylor*, 606 U.S. 522, 565 n.14 (2025); *see Emp. Div. Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 882 (1990) (describing "hybrid situation[s]" related to "communicative activity or parental right[s]"). Moreover, government action that burdens religious exercise is subject to strict scrutiny unless the action is both neutral and generally applicable. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021).

A. Delmont's law violates the Church's rights under *Mahmoud* and *Cantwell*

CADS imposes a burden on the Church of Light's free exercise of religion because it prohibits the Church's constitutionally protected religious expression.

1. CADS imposes a burden on the Church's Free Exercise of Religion because it prohibits the Church's religious expression

Under the Free Exercise Clause, certain religious interests have a "special character". *Mahmoud*, 606 U.S. at 565. Government action that burdens any such interest falls outside *Smith's* rule of neutrality and general applicability. *Mahmoud*, 606 U.S. at 565. Laws restricting the free exercise of religion in this way are subject to strict scrutiny. *See Mahmoud*, 606 U.S. at 565. Additionally, *Smith's* baseline does not encompass "hybrid rights." *See Smith*, 494 U.S. at 882. Laws are either held *per se* impermissible or are subjected to strict scrutiny if they burden both free exercise and another constitutional right. *See Cantwell*, 310 U.S. 296; *Mahmoud*, 606 U.S. 522. This is true in contexts where speech or parental rights to direct the education of their children are implicated.[5]

[5] *See Smith*, 494 U.S. at 881-82 (citing *Cantwell*, 310 U.S. at 304–307 (striking down a licensing system applied to religious solicitation); *see also Murdock v. Pennsylvania,* 319 U.S. 105 (1943) (invalidating solicitation tax as applied to the dissemination of religious ideas); *Follett v. McCormick,* 321 U.S. 573 (1944) (same); *Pierce v. Society of Sisters,* 268 U.S. 510, 45 (1925) (invalidating a prohibition on religious school choice); *Wisconsin v. Yoder,* 406 U.S. 205 (1972) (striking down a law mandating school attendance through high school contrary to the religious conviction of parents).

The Court's decision in *Mahmoud* has revivified the doctrine of *Yoder* and breathed new life into "hybrid rights." *See Mahmoud*, 606 U.S. at 565, n.14 (2025) (holding that where the interest is sufficiently similar to a previous hybrid rights precedent, "strict scrutiny is appropriate regardless of whether the policy is neutral and generally applicable"). This Court characterized the burden on parents as one possessing a "special character". *Mahmoud*, 606 U.S. at 565. In *Mahmoud*, as in *Yoder*, parents' rights to direct the religious upbringing of their children were "substantially interfere[ed] with." *Id.* at 565. The Court held that where an interest with a "special character" exists, "substantial interference" or "a very real threat of undermining [] religious beliefs and practices" is sufficient to trigger strict scrutiny.[6] *Id.* Because the Church views its missionary activity as essential for developing the religious upbringing of its youth, CADS burdens what is both a hybrid parental right under *Smith*, and a right with "special character" as in *Mahmoud*. *Smith*, 494 U.S. at 882; *Mahmoud*, 606 U.S. at 565.

Additionally, CADS burdens the Church in the exact same way Connecticut burdened the Cantwell's—Delmont is burdening the Church's right to exercise its religion by banning its religious speech. In *Cantwell*, the petitioners, two Jehovah's Witnesses, went door to door sharing their religious message with residents. 310 U.S. at 301. This included anti-Catholic messaging that caused several residents to express their desire for violence against the Cantwell's. *Id.* at 303. The Cantwell's were deemed in violation of a generally applicable statute

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[6] It may be contended that this "special character" only applies to a right to direct the religious upbringing of children. However, the Court has used such language outside of the parental rights context in other Free Exercise cases that implicate multiple constitutional provisions indicating it extends beyond merely the interest present in *Yoder*. *See i.e. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012) (refraining from applying *Smith* where free exercise and establishment interests intersect because such interests merit a "special solicitude").

requiring permits for solicitation and convicted of inciting others to "breach the peace." *Id*. On appeal, this court held that the Cantwell's religious expression was protected by the First Amendment and that Connecticut's licensing scheme was unconstitutional because it abridged their rights under the Free Exercise and Free Speech Clauses. *Id.* at 307.

Before the Court is a nearly identical case. The Church—in accordance with its sincerely held belief that personal, live, and public proclamation of its religious message is an essential religious practice—displayed a video clip on campus which contained actual footage of Marshall engaging in civic discourse and a photograph of her at the Delmont Treatment Center. R. at 10-11. The photograph included text that included contact information for the center. The Church's message, viewed by some as abrasive and even antagonistic, is religious speech. While the form of the speech is identical, Delmont imposes an even greater burden on the Church than was present in *Cantwell*. Instead of subjecting the Church to a licensing scheme, similar to that in *Cantwell*, CADS directly prohibits the Church's religious speech, subjecting the Church to damages for its members performing their religious obligation. R. at 6.

2. The Church of Light's speech is not categorically excluded from First Amendment protection.

This court held that in the absence of a "clear and present danger"[7], a state may not restrict religious speech. *Cantwell*, 310 U.S. at 303, 307.(holding that door-to-door religious solicitation—despite its proclivity to inspire violence—was protected under the First Amendment.) While the Church's display could be regarded as inflammatory, the facts of this case present no more a clear and present danger, or threat of imminent lawless action than

[7] The clear and present danger test's eventual replacement by Brandenberg's imminent lawless action test yields either an identical or even a more favorable result for the Church. *See* discussion *infra* Section II. A.2.

Cantwell did—in fact, imminent lawless action was more likely in *Cantwell*. The Cantwell's were face to face with those whom they confronted and antagonized, creating an immediate opportunity for violence to occur. *Cantwell*, 310 U.S. at 302-03. By contrast, Marshall was not present, nor even on campus when the broadcast occurred. R. at 11. Whether there is a clear and present danger may sometimes prove difficult to answer, but what is clear, is that a "present danger" is impossible without presence.

While the Court never formally adopted the clear and present danger standard, the eventual test for this type of categorical exclusion provides even more robust protections for speech, religious speech not excluded. *See Brandenberg*, 395 U.S. at 448-49; *see also* discussion *supra* Section I.D.2. The Court has found that even threatening illegal action such as domestic terrorism is insufficient on its own to merit falling outside the scope of First Amendment protections. *Brandenberg*, 395 U.S. at 446-47, 449 (holding that a Klan member, flanked by armed persons, threatening "revengeance" by means of a 400-thousand-person march on congress, on a specified day was protected by the First Amendment). The Church's actions pale in comparison—it never advocated that any illegal action be taken against Marshall or any other person. R. at 10. Even if the church incited lawless action against Marshall, such action would not be imminent—Marshall was nowhere near the scene. R. at 11.

Consequently, examined under the standard in *Cantwell* or *Brandenberg*, CADS is unconstitutional as it burdens religious speech that does not fall outside the scope of First Amendment protection. *See also* discussion *supra* Section I.C.

B. Delmont's law is not neutral and generally applicable

Under *Mahmoud* and *Cantwell*, Delmont imposed a burden on the Church that merits strict scrutiny *ab initio*. *See* discussion *Supra* Section II.A. However, even if that were not the case,

strict scrutiny would still apply. Laws that are not both neutral and generally applicable toward religion are subject to strict scrutiny. *Fulton*, 593 U.S. at 533. CADS is not neutral and generally applicable.

CADS unfairly targets the Church of Light, even though it is facially neutral. A law must be more than facially neutral to survive the First Amendment. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (holding a facially neutral law was invalid because it targeted religious practice). Laws face strict scrutiny under the First Amendment even for "subtle departures from neutrality." *Id.* (quoting Gillette v. United States, 401 U.S. 437, 452 (1971). Moreover, facially neutral laws face strict scrutiny where there is disparate treatment. *See i.e. Tandon v. Newsom*, 593 U.S. 61 (2021). Indeed, the government triggers strict scrutiny "whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* at 62. That a government treats some secular activity "as poorly as or even less favorably than the religious exercise at issue" is "no answer". *Id.*

The Court has established some aids in determining what constitutes government neutrality in the Free Exercise context. *See Masterpiece Cakeshop v. Colo. Civ. Rights Comm'n*, 584 U.S. 617, 639 (2018). However, these are not the only factors this court looks to identify where there is a "subtle departure from neutrality" or discriminatory purpose. *Id.* at 638. *Masterpiece* articulates that factors for evaluating neutrality include "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body," it does not treat this list as exhaustive. *Id.* at 639. In other contexts, the Court considers similar factors that mirror the analysis for discriminatory intent under the First Amendment. *Compare Village of Arlington Heights v.*

Metro. Hous. Dev. Corp., 429 U.S. 252, 266-68 (1977). For example, when combating racial discrimination, the Court looks at a variety of factors to determine whether there is discriminatory disparate treatment under a facially neutral law. Among these are disproportionate impact, the historical background of the act in question, and departures from normal procedures. *Id.* Each of these points toward CADS being discriminatory. Consequently, CADS merits strict scrutiny.

CADS disproportionately impacts the Church because unlike other entities, the Church and its members are *obliged* to engage in this form of expression. While disparate impact is not on its own sufficient to show discriminatory intent and a subtle departure from neutrality, it "provide[s] an important starting point." *Id.* at 266. Examining the history lends further credence to the fact that CADS is discriminatory. The Church of Light was originally formed in the nineteenth century in Delmont, and since then, Lightbearers and their traditions have become an integral part of Delmontan society. R. at 8-9. Beyond the Church's presence in the Delmontan historical tradition, Delmont knew that the Church would suffer as a result of this law because the Church lobbied against its implementation. *Id.* Despite the Church's plea, Delmont passed the law *knowing* it would adversely affect the Lightbearers and force them to act in contravention of their religious beliefs. R. at 46. Indeed, this is only worsened by the fact that the governor ignored the Church's lobbying attempts, demonstrating a lack of care and a departure from the norm. R. at 46. Taken together, this shows that Delmont attempted to covertly suppress the church's religious exercise. Even if subtle, any departure from neutrality is contemptible in the eyes of the First Amendment. *See Lukumi*, 508 U.S. at 534.

C. *Smith* should be replaced with a standard consistent with the text, history, and tradition of the First Amendment

As discussed, *Smith* is not the governing standard for this case.[8] While the Court could further clarify what remains within the scope of *Smith* and what lies outside its reach, the Court could should adopt a far simpler approach by recognizing what several of its members have already acknowledged: *Smith* is wrong. *See Fulton*, 593 U.S. at 553 (Alito J., concurring) ("The correct interpretation of the Free Exercise Clause is a question of great importance, and *Smith's* interpretation is hard to defend").

1. ***Stare Decisis* cannot rescue *Smith***

While the doctrine of *stare decisis* gives weight to this Court's previous holdings, it is not determinative—especially when a decision is "egregiously wrong." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). Indeed, where First Amendment liberties are at stake, *stare decisis* "applies with perhaps least force of all". *Janus v. Am. Fed'n of State, Cnty., & Mun. Emp.*, 585 U.S. 878, 917 (2018). This court considers several factors in determining whether a precedent should be overruled: (1) the quality of its reasoning, (2) the workability of the precedent in question, (3) consistency with other related decisions, (4) subsequent legal developments, and (4) whether there are strong reliance interests in the current precedent. *Id.* at 917. "No relevant factor . . . weighs in *Smith*'s favor." *Fulton*, 593 U.S. at 595 (Alito, J., concurring).

Several members of this Court have offered a blunt assessment of Smith's reasoning—*Smith* is "hard to defend." *Fulton*, 593 U.S. at 553 (Alito, J., concurring) (2021). Indeed, "[i]t can't be squared with the ordinary meaning of the text of the Free Exercise Clause or with the prevalent understanding of the scope of the free-exercise right at the time of the First Amendment's

[8] Though if it were, the Church's claim would still prevail. *See* discussion *supra* Sections II.A., II.B.

adoption." *Id.* Others have suggested that "[a]s a matter of text and structure, it is difficult to see why the Free Exercise Clause—lone among the First Amendment freedoms—offers nothing more than protection from discrimination." *Fulton*, 593 U.S. at 543 (Barrett, J., concurring). Scholars, judges, and this Court alike, have expressed skepticism regarding the quality of *Smith's* reasoning. *Id.*

As to *Smith's* workability, consistency, and agreement with subsequent developments, the Court has consistently limited *Smith's* reach since its inception.[9] Time and time again, this Court has either narrowed *Smith's* applications or entirely disregarded it. *See supra* note 10. Neither of these is a hallmark of a workable test. Moreover, this speaks to the consistency factor—each of these cases cuts into *Smith*, narrowing its scope, some finding entire categories of Free Exercise rights that are entirely outside of its rule of neutrality and general applicability. *Mahmoud*, 606 U.S. at 565. *Smith* is inconsistent with each of the aforementioned cases, along with subsequent legal developments like the Ministerial Exception. *See Hosanna-Tabor*, 565 U.S. 171 (placing the "Ministerial Exception" entirely outside of the realm of *Smith*).

Finally, there are no reliance interests in preserving *Smith*. While some parties and *amici* have proffered arguments purporting a reliance interest, such arguments are either flawed or unsubstantiated. For example, in *Fulton*, Philadelphia purported an interest in preserving RFRA and analogous state and local laws. *Fulton*, 593 U.S. at 613 (Alito, J., concurring). But Justice Alito's salient observation quashes this point: "How would overruling *Smith* disrupt the operation of laws that were enacted to abrogate *Smith*?" *Id.* Others have offered the argument that some people move to avoid jurisdictions that allow religious exemptions. *Id.* However, such

[9] *See Lukumi*, 508 U.S. 520; *Hosanna-Tabor*, 565 U.S. 171; *Fulton*, 593 U.S. 522; *Tanden*, 593 U.S. 61; *Mahmoud*, 606 U.S. 522.

a claim is without substance—not a single example of this actually happening was given. *Id.* Reliance is often considered "the strongest factor favoring the retention of a challenged precedent," *id.*, yet in the case of *Smith*, no such interest exists.

2. The Church prevails under the Free Exercise Clause, interpreted in accordance with the text, history, and tradition of the First Amendment

In *Smith's* place, the Court should adopt an interpretation of the Free Exercise Clause consistent with the Text, History, and Tradition of the First Amendment. The archetype for such an approach exists in this Amendment's neighbor, the Second Amendment. In *District of Columbia v. Heller*, the Court subjected to careful examination, the meaning of each of the terms in the Second Amendment. 554 U.S. 570 (2008). So too, the Court should carefully scrutinize the original meaning of the First Amendment. *See Heller*, 554 U.S. at 634-635 ("Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad").

The Court should begin with a textual analysis, taking into account the relevant historical tradition of the First Amendment. *Fulton*, 593 U.S at 563 (Alito, J., concurring). The text of the First Amendment reads in pertinent part: "Congress shall make no law … prohibiting the free exercise [of Religion]." U.S. CONST. AMEND. I. Relevant here are the terms "prohibiting" and "the free exercise of religion."[10] Much of the work in defining these terms has already been done and several members of the Court are in accord that the understanding of these two phrases in conjunction with each other would yield that "the ordinary meaning of 'prohibiting the free

[10] There is no dispute that religion is at issue, nor is there dispute over whether this is an act of the legislature. Consequently, the terms "[c]ongress", "shall make no law", and "religion" itself need not be defined at present, though any definition should comport with the original understanding. *Compare Fulton*, 593 U.S at 566 (Alito, J., concurring).

exercise of religion' was (and still is) forbidding or hindering unrestrained religious practices or worship." *Id.* at 567. CADS runs in direct contravention of this—it prohibits the Church's expression, expression that is mandated as a religious matter. Here, as in *Heller*, there should be a presumption of unconstitutionality. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022) ("In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct").

As to any proffered government defense, whether the Court adopts a universal strict scrutiny regime for religious burdens, as in *Sherbert*, or a historical approach, as in *Bruen*, the presumption of unconstitutionality is fatal for CADS. *See Sherbert v. Verner*, 374 U.S. 398 (1963); *Bruen*, 597 U.S. 1. Should the Court adopt strict scrutiny at this stage, CADS fails. *See* discussion *infra* Section III. Should the Court adopt a historical approach, *Bruen* provides a map. Under *Bruen*, if a plaintiff shows the government has violated his right, the burden shifts to the government to show that there is a historical tradition of government regulation that is relevantly similar to its current action. *Bruen*, 597 U.S. at 28-29. Under such an approach, the government would need to "point to *historical* evidence about the reach of the First Amendment's protections." *Bruen*, 597 U.S. at 24-25 (citing *Stevens*, 559 U.S. at 468-71). The relevant areas of speech where the government would be permitted to regulate would be found in the categorical exclusions discussed above—as demonstrated, the Church's speech is not categorically excluded. *See id.* (stating the burden is "on the government to show that a type of speech belongs to a historic and traditional categor[y] of constitutionally unprotected speech long familiar to the bar") (internal quotations omitted); *see also* discussion *supra* Section I.C.

Because CADS does not satisfy strict scrutiny and also does not fall into a historical exception wherein the government can regulate, CADS is unconstitutional as applied to the Church's religious expression.

III. CADS fails strict scrutiny because it is not narrowly tailored to serve the state's interests

Having established that the Church's broadcast violates both the Free Speech and Free Exercise Clauses, CADS must satisfy strict scrutiny, "the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Under strict scrutiny, the government must show that its actions were narrowly tailored to further that interest. requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *Reed*, 576 U.S. at 171. compelling government interest and that the means employed were the least restrictive means of achieving that interest. A law can fail strict scrutiny by either being overinclusive or underinclusive. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (holding a law "must not burden substantially more speech than is necessary to further the government's legitimate interests") (internal quotations omitted); *Reed*, 576 U.S. at 171 (striking down an ordinance for being "hopelessly underinclusive"). Moreover, the state must show that it seriously attempted to achieve the objective through less intrusive means, and it cannot justify a broader approach merely because it is easier or more efficient. *McCullen*, 573 U.S. at 495. Strict scrutiny leaves very few survivors—indeed, laws that trigger this inquiry begin with a strong presumption of unconstitutionality. *Reed*, 576 U.S. 155, 163. CADS, like most laws subjected to this exacting test, cannot survive.

The state of Delmont asserts that CADS was passed to protect students from harassment and to ensure the safety of their private information. While this interest is compelling, the means by

which CADS attempts to achieve this legitimate objective is both over and under-inclusive, encompassing more speech than necessary, including the Church's religious expression, while not regulating other speech which presents the same problem the government seeks to address.

A. CADS restricts both too much, and too little expression

CADS as written burdens a large amount of constitutionally protected speech that the state has no interest in. The statute applies to any disclosure of "private information" such as personal addresses, social security and phone numbers, contact information for family and employers, photographs of children, and identifications of the plaintiff's school. Disseminating any of this information exposes a speaker to liability even when this information is already available to the public. CADS would punish a publisher engaged in legitimate journalism, disseminating publicly available information, just as much as it would punish a student for posting a teacher's home address alongside an explicit call for "punishment." R. at 7. CADS makes no distinction between these circumstances and thus demonstrates its overbreadth.

CADS is also underinclusive. The dissemination of photographs of plaintiff's child is covered by CADS, but a photograph of any other family member is not. *See* Del. Ann. § 25.989(D). This begs the question: why do a plaintiff's children merit protection, but nieces and nephews, for instance, do not? Such underinclusivity means that CADS is not narrowly tailored on its face and consequently fails strict scrutiny.

B. Delmont inadequately considered less restrictive alternatives.

Finally, the state of Delmont did not effectively consider less intrusive means of achieving the state's interest in public safety and privacy. Like in *McCullen*, the record is silent on whether Delmont prosecuted anyone under pre-existing harassment, stalking, or assault statutes before enacting CADS. *McCullen*, 573 U.S. at 494. The Governor provides no details about what

alternatives were attempted, how their implementation fell short, and what specific evidence led to abandoning them. R. at 47. His office even admits that they found pre-existing statutes "helpful" albeit ineffective in addressing the initial disclosure. R. at 47. This only shows pre-existing statutes were less efficient than CADS at addressing the issue. Such a justification is insufficient to survive strict scrutiny. *McCullen*, 573 U.S. at 495. The fact that the police were slow to respond to the "flash share" incidents, R. at 47, demonstrates a law enforcement resource issue, this is not evidence that existing laws were inadequate. Because these pre-existing statutes do not burden speech, Delmont has failed to show CADS is the least restrictive means of achieving their interest.

Because CADS is not narrowly tailored in achieving Delmont's public safety and privacy goals, CADS cannot survive strict scrutiny. Consequently, CADS is unconstitutional and the holding of the Fifteenth Circuit should be reversed.

CONCLUSION

For the foregoing reasons, applying CADS to the Church of Light in this lawsuit would violate the First Amendment. Therefore, the judgment of the Fifteenth Circuit Court of Appeals should be reversed.

APPENDIX A

Constitutional Provisions

U.S. Const. Amend. I.

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

Statutory Provisions

28 U.S.C. § 1254(1).

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . .

CERTIFICATE OF COMPLIANCE

In accordance with Rule III.C.3 of the Official Rules of the 2026 Seigenthaler-Sutherland Moot Court Competition, we hereby submit this certificate of compliance to further certify that:

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

TEAM 011
Counsel for Petitioner
February 6, 2026