No. 25-CV-1994

IN THE SUPREME COURT OF THE UNITED STATES

THE CHURCH OF LIGHT, LLC,

Petitioner,

v.

LAURA MARSHALL,

Respondent.

On Writ of Certiorari to the to the United States Court of Appeals for the Fifteenth Circuit

BRIEF FOR THE PETITIONER

Team 31
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether the Campus Anti-Doxxing Statute of Delmont (CADS) violates the Church of Light's First Amendment right to freedom of speech insofar as it prohibits the public display of a photograph of Respondent at her place of employment following a video of Respondent delivering a politically charged speech.

II. Whether CADS violates the Church of Light's First Amendment right to free exercise of religion insofar as it prohibits the Church from engaging in its core religious practice of displaying a live, public witness of its faith in conjunction with a broadcast of the local news.

TABLE OF CONTENTS

UNITED STATES SUPREME COURT CASES

UNITED STATES CIRCUIT COURT CASES

UNITED STATES DISTRICT COURT CASES

CONSTITUTIONAL PROVISIONS

STATUTORY PROVISIONS

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifteenth Circuit is available at *Laura Marshall v. The Church of Light*, *LLC*, C.A. No. 25-CV-1994 (15th Cir. 2025). The opinion of the District Court of Delmont, Western Division is available at *Laura Marshall v. The Church of Light, LLC*, No. 25-CV-1994 (D. Del. Dec. 8, 2025).

STATEMENT OF JURISDICTION

The judgment entered by the United States Court of Appeals for the Fifteenth Circuit in this matter was final. The Church of Light properly filed a Petition for Writ of Certiorari on December 30, 2025, and this Court granted the same on January 7, 2026. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution and the Campus Anti-Doxxing Statute of Delmont (CADS), Del. Ann. Stat. § 25.989 (2025) are involved in this case. Both are reproduced in the Appendix of this brief.

STATEMENT OF THE CASE

Factual History

The Church of Light (hereinafter "the Church") is a religious denomination that was founded in Delmont during the nineteenth century. R. at 8. One of the Church's core practices consists of publicly proselytizing through a live witness and then disseminating the same testimony through a communicative format, which is intended to leave the recipient with a lasting impression of the message. R. at 8. Early on, the Church's members, known as "Lightbearers," would disseminate a free, Church-made newspaper called *The Lantern* to accompany the personal interactions. R. at 8. *The Lantern* combined religious messaging with local news and eventually became a staple of many Delmont communities that relied on the publication to receive their news.

R. at 8. As technology evolved, the Lightbearers evolved with it, first by using television broadcasts to disseminate *The Lantern* and later using live internet broadcasts. R. at 9.

The value of *The Lantern* is twofold. First, broadcasting satisfies the requirements that the young Lightbearers must fulfill as they carry their religious development into adulthood and complete their required missionary years. R. at 8. Second, the broadcasts provide news and other important information to residents of Delmont, especially on college campuses, where the Lightbearers maintain a strong presence and where the broadcasts are filmed. R. at 9. The Lightbearers now utilize vans with high-definition screens on the sides to drive around campuses displaying the news, weather, and other important information to students. R. at 9-10.

In fall of 2025, Delmont college campuses became embroiled in a controversy concerning the Delmont legislature's consideration of legislation to convert roughly one thousand acres of undeveloped land into zones where solar and wind energy would be produced. R. at 4. Given that Delmont contains numerous scenic attractions and national parks, the state is a tourism hub for nature enthusiasts and home to a number of environmental advocacy groups. R. at 4. The ways by which Delmont should preserve its natural landscapes while still developing effective ecological policies are contentious matters for these groups across the state. R. at 4. When the legislature began considering the energy farms, Delmont residents were sharply divided on the issue and two distinct camps emerged: the Nature Coalition, who opposed the energy farms, and the Energy Coalition, who favored them. R. at 5.

The disagreements eventually rose to a fever pitch. Unrest across Delmont college campuses resulted, sometimes causing violence, physical injuries, and property destruction. R. at 5. Some activists would use what became known as "flash shares" to intimidate their opponents. R. at 5. This practice consisted of concerted efforts among groups of people who would, in unison,

publish an opponent's contact and other identifying information online with the intention to bombard the opponent with phone calls and messages and have them surrounded and harassed in public. R. at 5. Flash shares are considered to be a form of doxxing.

The influx of flash shares prompted the Delmont legislature to pass the "Campus Anti-Doxxing Statute of Delmont" ("CADS") in September of 2025.[1] R. at 6. CADS created a private cause of action against individuals who engage in doxxing. In part, CADS made actionable the non-consensual disclosure, via any communicative platform, of private information about a Delmont university student or faculty member with the intent, in essence, to cause that person harm. R. at 6.

Given that the Lightbearers routinely report on matters of public interest in Delmont, they included a clip of Respondent, Laura Marshall, delivering a politically charged speech opposing the energy farms in one of their van broadcasts. R. at 10. Respondent is a student at DSU and a Nature Coalition activist. Showing Respondent's speech was only one of many times that the Lightbearers had reported on the Energy Farm Controversy. R. at 11. Respondent's speech had already been widely circulated online and on several news networks. R. at 10.

The Lightbearers also routinely include resources useful to students in their broadcasts, including those related to substance abuse. R. at 10, 12. In the slide following Respondent's speech, the screen displayed a list of substance abuse treatment centers, including photographs and contact information of the same. R. at 10. One of the centers was the Delmont Treatment Center, where Respondent was employed and a patient. R. at 10-11. One of the photographs showed Respondent working at the front desk of the treatment center. R. at 10. The day after the photograph was shown on the van, a group of individuals affiliated with the Energy Coalition confronted Respondent at

[1] The statute is reproduced in its entirety in the Appendix of this brief.

the Treatment Center, photographed her, harassed her, and damaged her car. R. at 11. The next night, a similar incident occurred. R. at 11. Respondent has since quit her job. R. At 11.

Procedural History

Believing that what happened to her was the result of intentional doxxing by the Church, Respondent sued the Church pursuant to CADS. R. at 12. Respondent alleged that the Church displaying the photo of her working at the Treatment Center following her political speech constituted disclosure of her private information with the intent to injure her. R. at 12. The Church moved for summary judgment, arguing that CADS was unconstitutional under the First Amendment as applied to it because it violated the Church's Free Speech and Free Exercise rights. R. at 12. The District Court for the District of Delmont agreed that CADS was unconstitutional as applied to the Church, granting it summary judgment. R. at 29. The Court of Appeals for the Fifteenth Circuit reversed. R. at 30. This Court granted certiorari to answer these constitutional questions. R. at 50.

SUMMARY OF THE ARGUMENT

The Fifteenth Circuit incorrectly held that CADS did not violate the Church's free speech or free exercise rights. In a break from settled First Amendment doctrine, the Fifteenth Circuit determined that a content-based restriction on speech and a substantial burden on religious exercise posed no constitutional issue simply because a political debate got out of control. The Energy Farm Controversy is not the first time such a thing has happened, nor will it be the last. Political controversy, even when it results in unrest, has never given the states free reign to impose their own will in place of the will of the Framers. This Court should reverse.

There is no question that CADS is a content-based restriction on speech, a species of law highly disfavored by this Court. CADS prohibits speech both because of its content and because

of its communicative effect. CADS is therefore presumptively unconstitutional unless it can survive strict scrutiny. It cannot.

To survive strict scrutiny, CADS must further a government interest of the highest order and it must be narrowly tailored, i.e., the least restrictive means possible, to achieve that interest. Delmont has not put forth a compelling interest in restricting the Church's speech, which has neither been proven harmful nor has it ever been questioned before. CADS is likewise not narrowly tailored. Rather, it is overinclusive insofar as it burdens substantially more speech than is necessary to achieve its goals. CADS prohibits the publication of lawfully obtained, publicly available information, information on matters of public concern, and speech that does not constitute any of the "well-defined and narrowly limited" forms of speech unprotected by the First Amendment. There are also other, less restrictive ways that Delmont could keep its universities safe. As for the Church's free speech claim, CADS is doomed to fail.

Not only does CADS violate the Church's free speech rights under the First Amendment, but it also undermines another vital constitutional protection: the free exercise of religion. This case falls squarely within *Employment Division v. Smith*, *Wisconsin v. Yoder*, and *Mahmoud v. Taylor*, all of which establish that CADS is subject to strict scrutiny under the Free Exercise Clause. CADS is not neutral under *Smith*. But even if CADS was neutral, it would still be subject to strict scrutiny under *Smith*'s hybrid-rights exception, which the District Court rightly recognized. Finally, because CADS imposes a similar burden to that which was present in *Yoder*, specifically a burden on the Lightbearers' religious development into their young adult years, *Mahmoud* requires a reviewing court to proceed to strict scrutiny irrespective of *Smith*.

In this case, all signs point toward strict scrutiny. When viewed through such a searching lens, CADS simply cannot measure up. The freedom of speech and the free exercise of religion are central values of this nation that this Court must protect. As such, this Court should reverse.

ARGUMENT

I. CADS is a presumptively unconstitutional content-based restriction on speech. As such, this Court must subject it to strict scrutiny.

The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech[.]" U.S. Const. amend. I. This prohibition applies equally to the states by way of the Fourteenth Amendment. *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940). Laws that target speech based on communicative content are considered content-based and are presumed unconstitutional. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). An easy way of determining whether a law is content-based is by asking whether the law draws distinctions based on particular subject matter. *Id.* It is clear that CADS does. Speech that identifies a student or faculty member of a Delmont university is prohibited under CADS, and speech that does not identify a student or faculty member of a Delmont university is allowed. Laws are also content-based when they define speech by its function or purpose. *Id.* at 163-64. Thus, if CADS is construed more broadly to prohibit speech that identifies a Delmont university student or faculty member with the intent to injure, it differentiates based on the purpose of the speech. In either case, the result is the same.

It is well settled that content-based restrictions on speech must undergo strict scrutiny, which is the "most demanding test known to constitutional law." *Id.* at 163; *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). To overcome strict scrutiny, the state must show that it has a "compelling state interest" and that the law is narrowly tailored, meaning that it is the least restrictive means of achieving that interest. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

II. CADS fails strict scrutiny.

A. Delmont has failed to put forth a compelling interest for restricting the Church's speech.

CADS purports to address public safety. Respondent asserts that it also addresses her interest in privacy, which the Fifteenth Circuit deemed "fundamental." R. at 35. To the extent that the interest at hand is public safety, Delmont has likely put forth a compelling interest to restrict some forms of speech. However, as to the Church, this justification falls short.

Because wide sweeping bans on speech are highly suspect, this Court requires that "court[s] applying strict scrutiny must ensure that a compelling interest supports *each application* of a statute restricting speech." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 478 (2007) (emphasis in original). This Court has cautioned against defining rights at such a "high level of generality" so as to diminish them. *United States v. Rahimi*, 602 U.S. 680, 740 (2024) (Barrett, J., concurring). Thus, restricting the Church's speech in particular must pass constitutional muster.

This Court addressed a similar issue in *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011). In *Brown*, California passed a statute limiting violent content in video games. *Id.* at 789. California's proffered justification was concerns over public safety as it related to minors. *Id.* at 794-95. This Court was unpersuaded. *Id.* at 796. Although public safety is an important concern, the statute did not effectively serve that goal, as there was scant evidence of a link between the banned speech and the asserted interest, preventing psychological harm to minors. *Id.* at 799-800. Therefore, simply citing public safety will not be sufficient where the application of the statute does not sufficiently address that concern.

The same is true here. It could be the case that a link could be proven between the speech in the previous CADS cases and the harm that resulted, given that those cases involved direct calls to action. R. at 7. In contrast, there is no direct evidence connecting the actions of the third parties

who attacked Respondent to the Church's broadcast of the news. As this Court stated in *Brown*, to show "at best a correlation" is not enough. *Brown*, 564 U.S. at 800. However, even if the speech and the harm could be connected, as is explained below, this Court should still be hesitant to hold that the Church should be silenced.

The asserted right to privacy that Respondent and the Fifteenth Circuit invoke is likewise uncompelling. In *Smith v. Daily Mail Publishing Co.*, this Court gave primacy to First Amendment rights over the right to privacy. There, a statute sought to prevent the release of juvenile detainees' private information that was available to the public through a government database. 443 U.S. 97, 98-100 (1979). West Virginia put forth a desire to protect the anonymity of juvenile offenders as its compelling interest requiring the restriction on speech. *Id.* at 104. This Court was not persuaded, holding that privacy was not an adequate interest when compared to the First Amendment right to publish lawfully obtained and publicly available information. *Id.* at 106. In fact, the only times that courts have held that privacy was a compelling enough interest to justify restricting speech involved states seeking to prevent speech from "invading" the tranquility of the home, usually through invasive robocalls or text messages. *See Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 877 (9th Cir. 2014), *aff'd on other grounds*, *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016); *Victory Processing, LLC v. Fox*, 937 F.3d 1218, 1227 (9th Cir. 2019). Nothing of this sort has occurred in this case. Rather, like in *Smith*, Respondent and the Fifteenth Circuit seek to keep publicly available information private, which cannot be a compelling state interest.

B. CADS is not narrowly tailored because it is overinclusive and other, less restrictive means are available to achieve Delmont's stated purpose.

This Court has long held that when it comes to content-based restrictions on speech, even laws that seek to achieve compelling government interests must be narrowly tailored to avoid unnecessary restrictions on First Amendment rights. CADS fails two of the metrics by which the

tailoring of restrictions is measured: CADS encompasses more speech, including decidedly protected speech, than necessary to achieve its goals and there are already laws available that address doxxing.

i. CADS prohibits the Church from publishing publicly available and lawfully obtained information related to matters of public concern.

When examined carefully, CADS clearly pulls within its scope speech that would otherwise be perfectly lawful. In *Snyder v. Phelps*, this Court concretized which forms of speech constitute matters of public concern; speech dealing with matters of "political, social, or other concern to the community" are afforded the highest First Amendment protections. 562 U.S. 443, 453 (2011). This ensures the public's access to robust debate over controversial issues. *Id.* To ascertain whether speech is of public concern, courts must examine "the content, form, and context" of the speech in light of the whole record. *Id.* (internal quotations and citations omitted). This inquiry makes clear that the Church's speech in this case encompasses matters of public concern.

First, the content of both Respondent's speech and the photograph involve matters of public concern. Respondent's speech centered around a controversy that had engulfed the entire state of Delmont in debate. Many listeners were moved by Respondent's passion and her speech was widely circulated across the state. R. at 10. The content of the speech was entirely political. While the photograph of Respondent is arguably of a more private nature, courts have consistently held that even private information can be of public concern when it relates to the crucial community concerns outlined in *Snyder*. Considering that the slide containing the photograph also contained information useful to the community, specifically the contact information for a substance abuse treatment center, the photograph easily falls within First Amendment protections.

Respondent's photograph falls into another category of protected speech: information about a public figure. *Waldbaum v. Fairchild Publications*, building on this Court's precedent in

Gertz v. Welch, established the test to determine when releasing facts concerning a public figure is protected. 627 F.2d 1287 (D.C. Cir. 1980); *Gertz*, 418 U.S. 323 (1974). First, the court must find the existence of a public controversy. Namely, a "dispute that . . . has received public attention because its ramifications will be felt by persons who are not direct participants." *Waldbaum*, 627 F.2d at 1297. Second, the court must look to the individual's role in the particular controversy, taking note of "past conduct, the extent of press coverage, and the public reaction to [their] conduct and statements." *Id*. Finally, the statement must be related to the individual's role in the controversy. *Id.* at 1298. These could be statements related to the individual's qualifications, motives, or potential bias. *Id.*

Here, the controversy is real and ongoing, spawning the very legislation in question in this case. Respondent purposely stepped into the middle of this controversy by giving a speech that quickly gained public notoriety. Any information gleaned from the photograph, such as her place of employment, could serve to show Respondent's qualifications to speak on the controversy and allows the public to properly weigh her expertise on the subject matter. To hold that the Church cannot publish such information hamstrings the public's ability to properly engage in the rigorous public debate that our history and tradition hold dear.

Even if Respondent were to argue that she is no kind of public figure, the result would be the same. Courts have consistently held that private information about individuals, public figures or not, is nonetheless protected. In the defamation context, courts have held that "'[o]nly in the extreme case' is it constitutionally permissible for a governmental entity to regulate the public disclosure of true facts about private individuals." *Coplin v. Fairfield Pub. Access TV Comm.*, 111 F.3d 1395, 1404 (8th Cir. 1997). In order for the government to regulate such information, (1) the regulation must be viewpoint-neutral; (2) the facts revealed must not already in be the public

domain; (3) the facts revealed about the otherwise private individual must not be a legitimate subject of public interest; and (4) the facts revealed must be highly offensive. *Id.* at 1405.

It is undisputed that the information that was "revealed" about Respondent was already in the public domain; any person could have found Respondent's picture on the Treatment Center's website and learned that she worked there. R. at 18, 45. In fact, the Church takes great care to *only* use publicly available information and images in its broadcasts. R. at 45. Therefore, regardless of whether Respondent's employment information specifically was of public concern, the fact that the information was already public makes this an easy question. The government cannot constitutionally prohibit the Church from sharing such information unless it can satisfy strict scrutiny. *See Florida Star v. B.J.F.*, 491 U.S. 524, 541 (1989) (holding that a newspaper may only be punished for publishing lawfully obtained truthful information when it is narrowly tailored to achieve a state interest of the highest order).

ii. Nothing contained in the information published by the Church can be construed to constitute fighting words, true threats, or incitement of violence. CADS nonetheless seeks to restrict it.

Unquestionably, nothing contained within the Church's broadcast falls within the very few types of speech that the First Amendment does not protect, which include some forms of obscenity, defamation, fraud, incitement, speech integral to criminal conduct, and true threats. *See United States v. Stevens*, 559 U.S. 460, 468 (2010); *Brayshaw v. City of Tallahassee*, 709 F. Supp. 2d. 1244, 1248 (N.D. Fla. 2010). The simple fact that others chose to use the information the Church provided to cause harm does not transform the broadcast into unprotected speech. The best argument that Respondent has to save the constitutionality of CADS on this ground would be that the Church's broadcast constituted a true threat or incitement. This argument, however, sorely misses the mark.

In *Brayshaw*, the Northern District of Florida struck down a statute designed to protect police officers by prohibiting any person from publishing officers' private information with "the intent to intimidate, hinder, or interrupt any law enforcement officer." 709 F. Supp. 2d. at 1247. The city argued that the intent requirement limited the statute to true threats, which would have put the speech outside of First Amendment protection. *Id.* at 1248. However, the court noted that releasing personal information, *even with the intent to intimidate*, is not a threat per se. *Id.* (emphasis added). Rather, the court held that simple names and dates could not rise to the level of true threats because they do not operate as a signal of impending violence or contain fighting or inciting words. *Id.* Ultimately, the court held that releasing police officers' private information was protected under the First Amendment. *Id.*

NAACP v. Claiborne Hardware Co. provides more insight into this Court's limited view on what constitutes unprotected speech, even when harm results. 458 U.S. 886, 927-28 (1982). In that case, a leading member of the NAACP gave a speech calling for the "discipline" of boycott violators. *Id.* at 902. Despite the coercive nature of the speech and the actual acts of retribution that followed, this Court upheld the First Amendment rights of the speaker. *Id.* at 911, 905, 929. A few decades later, this Court further defined and restricted the "true threats" doctrine in *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). There, St. Paul passed an ordinance banning "hate speech," which this Court found facially invalid under the First Amendment. *Id.* at 381. The city argued that the ordinance tackled the "secondary effects" of hate speech and this type of speech constituted fighting words, unprotectable under the First Amendment. *Id.* at 389. In holding that the speech targeted by the ordinance was protected, Justice Scalia noted that the reaction of listeners is not the sort of secondary effect limitable by law. *Id. See also Playboy*, 529 U.S. at 815 ("We have made clear that the lesser scrutiny afforded regulations targeting the secondary effects of crime . .

. has no application to content-based restrictions targeting the primary effects of protected speech.")

Therefore, even language that could tend to incite violence or cause harm is protected under the First Amendment and courts routinely overturn statutes seeking to restrict it. The Church published no information that tended to incite violence, *but even if it had*, that speech would still be protected under this Court's precedent. Because it is clear that the Church's speech was undoubtedly protected, bringing this speech under CADS's scope renders it overinclusive.

iii. Delmont can use less restrictive means to achieve its stated interest.

CADS is not narrowly tailored because there are other, less restrictive ways of regulating the conduct at issue. *United States v. Playboy Entertainment Group* presents this Court's method for determining the existence of less restrictive alternatives. 529 U.S. at 816. There, a section of the Telecommunications Act restricted broadcasting sexually explicit channels to late night hours. *Id.* at 806. Despite a possibly compelling justification, shielding children from explicit content, this Court held that less restrictive means existed to achieve that goal. In particular, the Court noted the existence of another statute which achieved the same goal without placing any burden on the freedom of broadcasters to publish explicit material. *Id.* at 816. Rather than mandating a block of adult channels, the other statute mandated that subscribers be given the option to block adult channels. *Id.* at 815. Because an equally effective method of addressing the problem existed, the statute cabining explicit content to certain hours was not narrowly tailored enough to pass muster. *Id.* at 827.

Ultimately, CADS holds itself out as the solution to a problem that already has solutions. The conduct that prompted the legislature to pass CADS (stalking, harassment, and assault) is already illegal. If Delmont is unable to prosecute doxxers under those statutes, those statutes could

be amended to encompass doxxing in ways that comply with the First Amendment, specifically by only targeting speech insofar as it constitutes fighting words, true threats, or incitement of violence.

The Church published information that it gathered lawfully from a public source. This information communicated important health resources to the community, as well as information on the Respondent, a newly minted public figure who recently gave an influential speech on a matter of public concern. CADS restricted this speech based on its content and must face strict scrutiny. Under strict scrutiny, privacy does not represent a compelling justification and CADS is not narrowly tailored to support the government's interest in public safety. CADS is just one of a long line of attempts by the states to restrict the publication of lawfully obtained public information. Like its predecessors, CADS is an unconstitutional restriction on the First Amendment right to free speech.

III. CADS is subject to strict scrutiny under *Employment Division v. Smith* because it is not neutral and it burdens both the Church's free speech and free exercise rights. The Fifteenth Circuit erred in holding otherwise.

The First Amendment to the United States Constitution, applicable against the states through the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . .[.]" U.S. Const. amend. I; *Cantwell*, 310 U.S. at 303. According to this Court, "[t]he principle that government may not enact laws that suppress religious belief or practice is so well understood that few violations [have been] recorded in [its] opinions." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523 (1993). While courts rarely strike down laws as violations of the Free Exercise Clause, they must do so when the Constitution requires; CADS requires this Court to do just that.

A. CADS may be generally applicable, but it is not neutral.

The flagship case regarding the Free Exercise Clause is *Employment Division v. Smith*, 494 U.S. 872 (1990). In *Smith*, this Court held that a law that incidentally burdens religious exercise

will not be struck down as a violation of the Free Exercise Clause if that law is neutral and generally applicable. *Id.* at 879. If a law is either not neutral, meaning it targets a particular religious group or practice, or it is not generally applicable, meaning that it offers exceptions, the law must be subject to strict scrutiny. *Lukumi*, 508 U.S. at 533; *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021). It is undisputed that CADS is generally applicable because it offers no exceptions, but neutrality presents a closer question.

The neutrality inquiry does not end simply because a law does not target a particular religion explicitly. While CADS does not explicitly refer to the Church, it does represent a "subtle departure from neutrality," as evidenced by CADS's legislative history. *See Masterpiece Cakeshop, Ltd. v Colo. Civ. Rights Comm'n*, 584 U.S. 617, 639 (2018) (listing the historical background and legislative history of a policy as relevant to the neutrality inquiry). Not only is the Church well known in Delmont, but the Church also informed the Governor time and time again that CADS would unduly burden its religious exercise, yet the legislature chose to ignore it. R. at 46. This is similar to *Lukumi* because the Delmont legislature "had in mind" the Church when it went forward with passing CADS. *See Lukumi*, 508 U.S. at 535. Thus, CADS is not neutral and should be subject to strict scrutiny on that ground.

However, the *Smith* Court also articulated an exception to that general rule. The First Amendment bars application of a neutral, generally applicable law to religiously motivated actions if the government's effort to restrict that action implicates the Free Exercise Clause "in conjunction with" other constitutional protections. *Smith*, 493 U.S. at 881. Thus, alleged infringement on such "hybrid-rights" triggers strict scrutiny. *Id.* at 881-82. This became known as the Hybrid-Rights Doctrine. While the doctrine has generated a great deal of confusion among the lower courts, it is clear that it applies here.

B. Under any variation of hybrid-rights jurisprudence, the Church is entitled to strict scrutiny under *Smith*.

In the years since *Smith*, lower courts have struggled to make meaning of the hybrid-rights exception. An analysis of case law and scholarship shows that the federal circuits have generally split into three camps when analyzing hybrid-rights claims. Erwin Chemerinsky, *The Best of a Bad Lot: Compromise and Hybrid Religious Exemptions*, 123 Harv. L. Rev. 1494, 1495 (2010). Some courts apply the "independent viability" rule, which holds that the exception to *Smith*'s general rule is warranted when the plaintiff raises an independently viable constitutional claim in addition to their free exercise claim. *Id.* at 1501. Other courts apply a "colorable claim" rule, which holds that a plaintiff must supplement their free exercise claim with a second, "colorable" constitutional claim to secure the exception. *Id.* at 1503. Other courts employ a "refusal to recognize" approach, seeking to avoid the analysis altogether by characterizing *Smith*'s discussion of hybrid-rights as dicta. Hope Lu, *Addressing the Hybrid-Rights Exception: How the Colorable-Plus Approach Can Revive the Free Exercise Clause*, 63 Case W. Res. L. Rev. 257, 265 (2012).

The Fifteenth Circuit took the third camp's approach, specifically writing that it "[found] the validity of *Smith*'s supposed hybrid-rights exception 'lacking,'" after citing the Second and Sixth Circuits and Justice Souter's *Smith* concurrence. R. at 41. With respect, that is not a lower court's decision to make. *See Lefebure v. D'Aquilla*, 15 F.4th 650, 660 (5th Cir. 2021) ("[T]he only court that can overturn a Supreme Court precedent is the Supreme Court itself.") Unless and until this Court chooses to overturn *Smith*, lower courts must make meaning of the entire case, including the hybrid-rights exception. Moreover, regardless of whether the hybrid-rights discussion was dicta, wholesale refusal to consider it disregards this Court's position as the final arbiter of constitutional law, *see e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958), and closes the door on litigants who have suffered legitimate constitutional injuries. *See Schwab v. Crosby*, 451 F.3d 1308, 1325

(11th Cir. 2006) ("[T]here is dicta and then there is dicta, and then there is Supreme Court dicta.") Under the case law that lends proper credence to the hybrid-rights exception, the Church is entitled to have CADS reviewed under strict scrutiny.

i. Independent Viability

Under the independent viability theory of hybrid-rights, courts require that litigants couple their free exercise claims with a second, independently viable constitutional claim to trigger *Smith*'s exception. Jonathan B. Hensley, *Approaches to the Hybrid-Rights Doctrine in Free Exercise Cases*, 68 Tenn. L. Rev. 119, 130 (2000). Thus, unless the companion claim would receive strict scrutiny on its own, the free exercise claim will not.

In *EEOC v. Catholic University of America*, a female professor, Sister McDonough, applied for tenure in the university's Department of Canon Law. 83 F.3d 455, 458 (D.C. Cir. 1996). After the faculty denied her application, McDonough filed a charge of discrimination, alleging that the faculty had held her application to a higher standard than it had male professors to whom it had recently granted tenure. *Id.* at 459. The judge ultimately dismissed the case without reaching the merits, reasoning that because the faculty's reasons for denying McDonough tenure centered around the quality of her Canon Law scholarship, an "excessive entanglement" in religious matters would ensue if the court intervened, violating the Establishment Clause. *Id*. at 465-66. The D.C. Circuit agreed. *Id*. at 466. The D.C. Circuit also reasoned that the case presented just the "hybrid situation" envisioned by *Smith* by implicating the University's free exercise rights alongside an Establishment Clause claim. *Id.* at 467. Thus, because the University presented a free exercise claim and an Establishment Clause claim that the court had already determined to be viable on its own, the court could not burden the University by second guessing its religiously motivated personnel decisions. *Id*.

The First Circuit also recognized the independent viability theory in *Brown v. Hot, Sexy, & Safer Productions.*, 68 F.3d 525 (1st Cir. 1995). There, two high schoolers and their parents sued after a public school required the students to attend an assembly that contained a sexually explicit AIDS awareness program. *Id.* at 529. The plaintiffs argued that the school had violated their free exercise rights, due process rights, and their rights to privacy. *Id.* at 530. The district court found that the plaintiffs had not stated privacy or due process claims and accordingly dismissed them. *Id.* at 539. The court was then able to dismiss the free exercise claims, reasoning that "the free exercise challenge [was] thus not conjoined with an independently protected constitutional protection." *Id.* Therefore, because the privacy and due process claims could not stand on their own, the free exercise claim also failed.

ii. Colorable Claims

Courts that use the colorable claim approach require that litigants bring, in addition to their free exercise claim, a companion constitutional claim that is at least "colorable." Rather than requiring a companion claim that could per se stand alone, this standard requires that the plaintiff show a "fair probability, but not a certitude, of success on the merits" on the second claim. *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1297 (10th Cir. 2004).

The Tenth Circuit first articulated the colorable claim approach in *Swanson v. Guthrie Independent School District No. 1-L*, 135 F.3d 694 (10th Cir. 1998). There, the parents of a middle schooler sued the school district, arguing that its rule prohibiting their child from attending public school part time while receiving a religious education at home violated both their free exercise rights and their rights as parents to direct their child's education. *Id.* at 697-98. The court determined that the plaintiffs did not establish a proper claim of infringement on their parental rights and dismissed that claim. *Id.* at 699. In subsequently dismissing the free exercise claim, the court wrote that "[w]hatever the *Smith* hybrid-rights theory may ultimately mean, we believe that

it at least requires a colorable showing of infringement of recognized and specific constitutional rights[.]" The Ninth Circuit likewise held in *Miller v. Reed* that the plaintiff's hybrid-rights claimed failed because his companion claim, a violation of his right to interstate travel, was "utterly meritless," i.e., not even colorable. 176 F.3d 1202, 1208 (9th Cir. 1999). These cases make clear that hybrid-rights claims often fail not because the concept of hybrid-rights is inherently flawed, but because the litigants genuinely do not have viable companion claims. The Church's claims do not suffer from the same infirmities.

With these principles in mind, it becomes clear that the Church prevails under either of the above-articulated approaches. As displayed above, the Church has presented a free speech claim that could certainly stand on its own, making it independently viable. To be sure, the *Smith* Court itself referenced two cases where the same two rights were implicated, characterizing them as hybrid situations despite the cases having been decided on free speech grounds alone. *See Smith*, 494 U.S. at 882 (citing *Wooley v. Maynard*, 430 U.S. 705 (1997) and *West Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943)). Given that colorability is a less exacting standard than independent viability, it necessarily follows that the Church's free speech claim is colorable.

The clauses of the First Amendment are no strangers to one another. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) ("These clauses work in tandem. Where the Free Exercise Clause protects religious exercises, whether communicative or not, the Free Speech Clause provides overlapping protection for expressive religious activities."); *Bates v. Fariborz Pakseresht*, 146 F.4th 772, 784 (9th Cir. 2025) (describing the Free Exercise and Free Speech Clauses as "conjoined" and central to our constitutional system). The Church has not presented an esoteric companion claim, such as the right to interstate travel or a lofty substantive due process claim conjured only to bolster a weak free exercise claim. Rather, the Church has presented claims

under two well established bodies of law that can stand alone or go hand in hand. As the District Court recognized, the Church's religious exercise and its speech *cannot* be separated due to the tenets of the faith. R. at 26. If the hybrid-rights exception applies anywhere, it surely applies here.

IV. Under *Mahmoud v. Taylor*, CADS is subject to strict scrutiny regardless of whether or how this Court applies *Smith*.

As the District Court correctly concluded, CADS also requires strict scrutiny because the facts of this case place us squarely within *Mahmoud v. Taylor*, decided just last term. 606 U.S. 522 (2025). In *Mahmoud*, this Court held that when a law places a burden on religion of the same character present in *Wisconsin v. Yoder*, courts must proceed to strict scrutiny regardless of whether the law is neutral and generally applicable under *Smith*. *Id.* at 564. The burden present in *Yoder* was that state mandated public schooling until the age of sixteen, "'substantially interfered with the religious development' of the [Amish] parents' children." *Id.* at 565 (citing *Smith*, 406 U.S. at 218). In *Mahmoud*, this Court found the same burden imposed by school district policies that required schools to teach from LGBTQ+ inclusive storybooks without providing an opt-out option for parents. This Court further found that the burdens in *Mahmoud* and *Yoder* "pose[d] a 'very real threat of undermining' the religious beliefs and practices that parents wish[ed] to instill in their children." *Id.* Given that CADS imposes the same burden on the Lightbearers, whether CADS is neutral and generally applicable is of no consequence.

Mahmoud's discussion of *Yoder* can be read in either of two ways. First, *Mahmoud* can be understood to focus on preventing substantial interference with the upbringing of younger members of a religion. Second, *Mahmoud* can be understood to encompass another aspect of the burden found in *Yoder*: disregarding the significance of religious practices that have existed without issue for centuries. The Church prevails under either understanding.

A. CADS substantially interferes with the Lightbearers' religious development and provides little benefit relative to the burden it imposes.

In *Yoder*, the interference at issue was with the ability of the Amish to raise their children in a way consistent with their faith. 406 U.S. 205, 210-11 (1972). The Amish also argued that compulsory schooling past eighth grade threatened the continued survival of Amish communities as they existed in the United States. *Id.* at 209-210. This Court therefore invalidated Wisconsin's compulsory education laws as applied to the Amish as a violation of their free exercise rights. *Id.* at 237. Because CADS imposes a similar burden on the Lightbearers, this Court should likewise strike it down. While it is true that *Yoder* focused on young children, this Court did not limit the case's reach to young children only. *Yoder* must apply to the young-adult Lightbearers upon whom the responsibility to spread the faith through live methods primarily falls. This is a core part of the missionaries' practice and the young adherents are *required* to complete their mission in order to become more resolute in their faith and grow into the adults their community needs them to be. R. at 45. Just as the state could not stifle this growth in *Yoder* and *Mahmoud*, the state should not be permitted to do so here.

The *Yoder* Court was also particularly concerned with the risks to the continued survival of the Amish community and its religious practices as they existed at the time. *Id* at 209-210. Wisconsin's education law would have required the Amish to "abandon belief and be assimilated to society at large or be forced to migrate to some other and more tolerant religion." *Id* at 218. Threatening the Lightbearers with litigation if they choose to carry out a core, required component of their religion threatens the Church just as Wisconsin's compulsory education threatened the Amish. If the Church is to avoid possibly fatal financial risks, R. at 45., it must either modify or abandon parts of its religion, just as the Amish would have had to do. Neither this Court nor the state of Delmont has the right to put the Church in such a position.

i. CADS again fails strict scrutiny.

CADS is subject to strict scrutiny for three reasons: it is not neutral, it implicates the Church's free speech and free exercise rights, and it imposes a burden similar in character to that which was present in *Yoder*. "To survive strict scrutiny, the government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests." *Id.* at 565 (quoting *Fulton*, 593 U.S. at 541) (internal quotations omitted). "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541. Safeguarding universities could be accomplished in a multitude of ways, none of which Delmont has explored.

Moreover, when the *Yoder* Court applied strict scrutiny to Wisconsin's law, it considered the connection between the state's interest and the method of achieving it. Because compulsory secondary education was a "relatively recent development" compared to the Amish way of life, which had existed harmoniously with secular society for centuries, whether the compulsory education law would serve the state's interest was merely speculative. *Id.* at 226-27. In *Mahmoud*, Justice Thomas recognized that the practice of teaching children about sexuality and gender identity is even more new than the law at issue in *Yoder*, concluding that there was little evidence that the lessons were "critical to the students' civic development." *Mahmoud*, 606 U.S. at 582 (Thomas, J., concurring).

CADS presents the same situation. Doxxing is a relatively new development, especially compared to the Church's practices. *Compare* Franke LoMonte & Paola Fiku, *Thinking Outside the Dox: The First Amendment and the Right to Disclose Personal Information*, 91 UMKC L. Rev. 1, 3 (2022) (stating that what we understand to be doxxing began in the 1990s) *with* R. at 44 (stating that the Church of Light and its practices began in 1873). Given such a long history and the fact that the record contains no evidence, or even allegations, that the Church's practices have

caused anyone harm prior to Respondent's accusations, *Yoder* and *Mahmoud* compel the conclusion that preventing doxxing is not of such a high order that it can justify the impact that CADS will have on the Church. CADS once again fails strict scrutiny.

CONCLUSION

Freedom of speech and religion are two bedrocks of any functional and free society. Time and time again, this Court has upheld these rights when states have sought to restrict them. Now is no different. In fact, a political issue such as the Energy Farm Controversy is exactly the type of situation that demands that speech be uninhibited. When a statute burdens religious exercise on top of restricting speech, this Court has all the more reason to be skeptical of that statute's constitutionality. The Fifteenth Circuit was incorrect to so blithely waive these concerns away. This Court should reverse.

APPENDIX

1. U.S. Const. Amend. I. provides:

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

2. Delmont Annotated Statutes § 25.989 (2025) – Campus Anti-Doxxing Statute of Delmont provides, in relevant part:

   A private cause 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 staff member at a Delmont college or university with the intent to "stalk, harass, or physically injure."

   (a) "Injure" means to subject another to bodily injury or death or property damage.

   (b) "Harass" means to subject another to severe emotional distress such that the individual experiences anxiety, fear, torment or apprehension that may or may not result in a physical manifestation of severe emotional distress or a mental health diagnosis and is protracted rather than merely trivial or transitory.

   (c) "Stalk" means to engage in a pattern of unwanted, obsessive, and intrusive behavior that would cause a reasonable person to feel threatened or fear for their safety or the safety of others.

   Private information is defined as:

   (A) The plaintiff's home address, personal email address, personal phone number, social security number, or any other personally identifiable information;

   (B) Contact information for the plaintiff's employer;

   (C) Contact information for a family member of the plaintiff;

   (D) Photographs of the plaintiff's children;

   (E) Identification of the school that the plaintiff's children attend.

   This statute adopts the definition of "intent" contained in Del. Ann. Stat. § 163.732 (2020):

   "Acting purposefully or recklessly to place a person in reasonable fear of bodily injury, death, or property damage as to cause severe emotional distress to such person."

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 3 of the Official Rules of the 2025-2026 Seigenthaler-Sutherland Cup Moot Court Competition, Team 31 hereby certifies that (1) all work product contained in this brief is solely our own; (2) this team has complied fully with our school's honor code; and (3) this team has complied fully with the Rules of the Seigenthaler-Sutherland Cup Moot Court Competition.