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 UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 32
Attorneys for Respondent

QUESTIONS PRESENTED

1. Is the Campus Anti-Doxxing Statute constitutional under the Free Speech Clause of the First Amendment when it protects the public from harm by providing a private right of action against speech that is likely to either threaten the subject of the speech or spur others to violence?

2. Is the Campus Anti-Doxxing Statute constitutional under the Free Exercise Clause of the First Amendment when it makes no reference to religion in its text, its application, nor its legislative history?

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STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Fifteenth Circuit upon granting a writ of certiorari pursuant to 28 U.S.C. § 1254(1). The Fifteenth Circuit had jurisdiction over the District Court's decision pursuant to 28 U.S.C. § 1291. The District Court for the Western District of Delmont had original jurisdiction pursuant to 28 U.S.C. § 1331.

STANDARD OF REVIEW

This Court reviews a lower court's reversal of summary judgment *de novo*. *Pierce v. Underwood*, 487 U.S. 522, 558 (1988).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Free Speech and Free Exercise Clauses of the First Amendment of the United States Constitution.

STATEMENT OF CASE

Laura Marshall (hereinafter, "Ms. Marshall") is a student at Delmont State University (hereinafter, "DSU"). R. at 1, 7. Ms. Marshall is also a patient of the Delmont Treatment Center (hereinafter, the "Center"), a non-profit center assisting those with substance abuse, where she both works part-time and takes part in ongoing therapy. *Id.* at 10-11.

On the week of September 22, 2025, Ms. Marshall was verbally and physically accosted by approximately twenty masked individuals while exiting the Center after treatment. R. at 11. The crowd followed Ms. Marshall all the way to her car while photographing, catcalling, and insulting her about her ongoing struggles with addiction in the process. *Id.* The night after this incident, a second crowd followed suit: keying her car, thereby spurring a car accident. *Id.* In both instances, the attack was spontaneous, leaving Ms. Marshall unable to seek protection from the police. *Id.* Ms. Marshall subsequently quit her job and stopped treatment at the Center due to fear for both herself and the Center. *Id.*

These attacks occurred only twenty-four hours after the Church of Light (hereinafter, the "Church") publicly displayed a picture of Ms. Marshall at the Center. *Id.* The name of the Center was "clearly visible" in the picture. *Id.* This picture was accompanied by a list that announced the address, phone number, and hours of operation for the Center. *Id.* Even though there are seven substance abuse treatment centers in Delmont, the Center was one of only two treatment facilities whose location information was broadcast on the Church's display on "high-definition LED screens on the sides" of vans that patrol Delmont in shifts. *Id.* at 9-10. The Church's LED screen also displayed a video of Ms. Marshall's participation in an environmental rally. *Id.* at 10.

Ms. Marshall's experience is not an isolated incident. Starting in August 2025, numerous campus clashes violently disrupted DSU, ambushing both students and administrators. *Id.* at 5. These incidents stem from the Energy Farm Controversy (hereinafter, the "Controversy"), a debate regarding the usage of woodlands in Delmont wherein two factions, the "Energy Coalition" and the "Nature Coalition," lead the dispute. *Id.* at 4-5. Members of these factions have "stormed" libraries and "disrupted" classes at DSU; crowded DSU administrators' homes; and "ambushed" or "physically" confronted students at their residences. *Id.* at 5. The actions of these groups resulted

in the hospitalization of several students and the calling of the fire department to the home of an administrator. R. at 5.

Police found these incidents often occurred "in sudden bursts of activity, as if on cue," due to "flash shares" of a victim's personal information. *Id.* Flash shares, also known as "doxxing," are the use of electronic means to identify an intended target by sharing their "phone number, picture, location, and other personal information." *Id.* at 5-6. Once shared, the victim is "swarmed by a wave of physical confrontations, calls, and e-mail or social messages." *Id.* at 6. Doxxing in Delmont occurs at such a pace that police cannot intercede without "endangering both the victims and the police." *Id.* Since the start of the Controversy, instances of doxxing have increased by 150 percent. *Id.*

Delmont's Governor initially sought to address doxxing through existing law. *Id.* at 48. Because stalking, harassment, and trespass laws were reactive, however, the Governor's office found they "did not address the initial disclosure practice that created the risk." *Id.* Without existing means of addressing the "extremely volatile" situation, the Delmont State Legislature drafted Del. Ann. Stat. § 163.732 (2025), the "Campus Anti-Doxxing Statute of Delmont" (hereinafter, "CADS"). *Id.* at 6, 47. Drafted as a "narrow" statute, CADS "created 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 or staff member at a Delmont college or university." *Id.* at 6, 47. CADS also requires the individual to have acted with intent to "stalk, harass, or physically injure." *Id.* at 6. CADS provides only injunctive and/or monetary relief. *Id.* at 6.

Following its passing on September 12, 2025, CADS has acted as the basis of two successful lawsuits. *Id.* at 7. First, CADS permitted a professor to collect damages from a student

who called for the "punishment" of the professor for enforcing school policy; the sharing of the professor's home address resulted "in a barrage of rocks" being thrown through their window within ten minutes of doxxing. R. at 7. Second, CADS enjoined protesters from returning to the employer of a Nature Coalition activist after they "blocked the jobsite entrance" and "prevented employees from leaving." *Id.*

The Church, formed in Delmont, views proselytization through spoken and written word as a part of its faith: requiring missionary service and "live, personal, public proclamation[s]" of faith. *Id.* at 8-9. As part of this campaigning, the Church distributes a self-made publication, *The Lantern*. Recently, *The Lantern* has transitioned from print to TV and electronic broadcasting as the primary means of communicating its message; the Church's missionaries, known as Lightbearers, "drive vans around . . . campuses bearing high-definition LED screens on the sides," showing religious messages in combination with secular content. *Id.* at 9. Lightbearers are active in the Controversy, having "taken the side" of the Energy Coalition in the violent environment conflict. *Id.* at 8, 10.

Ms. Marshall brought suit against the Church on October 3, 2025, seeking damages and injunctive relief under CADS. *Id.* at 12. Petitioner answered by filing a motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, arguing that CADS infringes on its First Amendment rights of free speech and free exercise. *Id.*

The District Court for the Western District of Delmont granted Petitioner's motion for summary judgment and dismissed Ms. Marshall's request for relief. *Id.* at 29. Ms. Marshall appealed to the United States Circuit Court of Appeals for the Fifteenth Circuit, which reversed the judgment of the lower court and denied summary judgment for Petitioner. *Id.* at 43. Petitioner

sought a Writ of Certiorari to this Court. *Id.* at 49. This Court granted the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifteenth Circuit. *Id.* at 50.

SUMMARY OF THE ARGUMENT

Petitioner's First Amendment claims rise and fall based on this Court's elevation of legitimate governmental interests over incidental burdens on Free Speech and Free Exercise rights. Here, the Delmont State Legislature drafted CADS to ensure the state's purported interest in protecting public welfare. Delmont narrowly crafted the legislation in such a manner that it encroaches on the First Amendment minimally, if at all. As the Fifteenth Circuit found, CADS violates neither Free Speech nor Free Exercise because of its authentic aim and limited reach. This Court should affirm the holding of the Court of Appeals the following for three reasons.

First, CADS only proscribes speech left unprotected by this Court's Free Speech jurisprudence; and, to the extent that CADS affects otherwise protected speech, the law's narrow tailoring and legislative justification permit it to stand under enhanced judicial scrutiny. This Court's holdings in *Virginia v. Black* and *Brandenburg v. Ohio* make clear that First Amendment protections do not apply to violent speech. CADS regulates only violent speech due to the close affiliation between doxxing and violent behavior, both within Delmont and across the country. Moreover, CADS survives this Court's enhanced judicial scrutiny because it advances a legitimate legislative interest using limited means where alternate avenues proved reactive and futile.

Second, CADS is a neutral and generally applicable law whose incidental burden on religion passes rational basis review under this Court's Free Exercise jurisprudence; and, even if this Court finds otherwise, CADS is narrowly tailored with respect to religion and thereby survives strict scrutiny. According to this Court's holding in *Smith*, neutral laws that apply uniformly as a means of advancing a legitimate interest are permissible even if religious exercise is burdened

incidentally. Here, CADS places all citizens, religious or otherwise, under identical restrictions as a means of keeping the public safe. Furthermore, the legislative history of CADS supports the Fifteenth Circuit's conclusion that CADS passes strict scrutiny due to its compelling interest in public safety and constrained scope.

Third, the Court of Appeals correctly determined that a purported "hybrid rights" exception is insufficient to sustain a Free Exercise claim where this Court's jurisprudence would otherwise allow the regulation to stand.

ARGUMENT

I. THE FIFTEENTH CIRCUIT PROPERLY HELD THAT CADS DOES NOT INFRINGE UPON THE CHURCH OF LIGHT'S CONSTITUTIONAL RIGHT TO FREE SPEECH

CADS does not violate the Church's First Amendment right to Free Speech for two reasons. First, the statute prohibits only speech left unprotected by this Court's First Amendment jurisprudence. This Court recognized decades ago that the First Amendment does not give an individual free rein to speak with impunity: "[T]he right of free speech is not absolute at all times and under all circumstances." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942). In accordance with this principle, this Court delineated two categories of speech that "have never been thought to raise any [c]onstitutional problem:" true threats and incitement. *Id.* at 571-72; *see Virginia v. Black*, 538 U.S. 343, 362-63 (2003); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Here, CADS proscribes only true threats and incitement.

Second, should the Court find that CADS affects protected speech, CADS still passes constitutional muster under both intermediate and strict scrutiny. In the First Amendment context, this Court's application of enhanced scrutiny leaves room for legislatures to address compelling governmental interests so long as the means used to do so are narrowly tailored. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995). Here, CADS advances Delmont's purported

interest of ensuring public safety while using means that "are not substantially broader than necessary to achieve" that interest. *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). For the foregoing reasons, this Court should uphold the Fifteenth Circuit's decision that CADS does not violate the free speech rights of the Church.

A. The speech prohibited by CADS is not protected by the First Amendment because its limited social value is outweighed by Delmont's greater interest in protecting public welfare.

When the government prohibits true threats or inciteful language, this Court's precedents require the application of rational basis review. "Such utterances are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky*, 315 U.S. at 572. Consequently, this Court should uphold the decision of the Fifteenth Circuit because CADS prohibits only true threats or incitement.

i. The speech prohibited by CADS escapes First Amendment protection as a true threat because its utterance is intimately associated with violent acts.

CADS prohibits language left unprotected by this Court's true threats jurisprudence. True threats are words that "by their very utterance inflict injury" on an intended recipient. *Chaplinsky*, 315 U.S. at 572. Speech is a true threat when its utterance is so interconnected with accompanying violence that a reasonable person feels "fear of bodily harm or death." *Black*, 538 U.S at 360. Moreover, this Court has made clear that particularly virulent true threats may be regulated along the basis of content so long as the prohibitory statute includes an additional element of mens rea. *See id.* at 362-63, 365-66; *R.A.V. v. St. Paul*, 505 U.S. 377, 388 (1992).

For example, in *Virginia v. Black*, this Court held that a statute banning cross burning with the intent to intimidate "does not run afoul of the First Amendment" because of cross burnings' "pernicious history as a signal of impending violence." 538 U.S. at 362-63. This Court observed

that "cross burnings have been used to communicate both threats of violence and messages of shared ideology" across multiple states and several decades. *Black*, 538 U.S. at 354. Notably, some instances of cross burning accompanied non-violent gatherings, such as weddings and protests. *Id.* at 355. Nonetheless, the Ku Klux Klan's ubiquitous practice of burning crosses "as a tool of intimidation and a threat of impending violence" was sufficient to justify the prohibition of the speech as "a particularly virulent form of intimidation." *Id.* at 363. Therefore, cross burning's inseparable connection with violent actors permitted Virginia to prohibit this mode of speech while remaining "fully consistent" with the First Amendment. *Id.* at 363.

Here, like in *Black*, the state of Delmont enacted CADS to curtail speech with a virulent "history as a signal of impending violence." *Id.*; R. at 5-6. The intimidating effect of "doxxing" is confined neither to Delmont nor the twenty-first century. *See Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1062-63 (9th Cir. 2002). Starting in 1995, the murder of a doctor whose name appeared on an "unwanted" poster as part of an anti-abortion campaign "sent shock waves of fear through the ranks of abortion providers across the country." *Id.* at 1066. The state of Delmont has also experienced doxxing's "pernicious" effects with saliency. The Energy Farm Controversy, and "flash-shares" of personal information by its participants, resulted in hospitalizations, physical ambushes, and even arson at the home of an administrator. R. at 5. Thus, as the state in *Black* sought to protect its citizenry by proscribing speech commonly identified with racial violence, the state of Delmont now seeks to protect its citizenry from speech commonly identified with "a wave of physical confrontations" and intimidating electronic messages. *Id.* at 6; *see* 538 U.S. at 363. Given doxxing's connection with violence both within Delmont and in states across the nation, CADS adheres to *Black* by prohibiting the non-consensual sharing of personal information as a true threat.

Further, CADS adheres to this Court's guidance by requiring a sufficient level of mens rea. In *Counterman v. Colorado*, this Court held that the prosecution of true threats demands "some subjective understanding of the threatening nature of [the] statements." 600 U.S. 66, 69 (2023). Considering true threats are "indeed pos[e] real dangers" to the public, only recklessness is constitutionally required to regulate such language. *Id.* at 73. CADS follows this obligation to the letter. *See* Del. Ann. Stat. § 163.732 (2025). This statute not only requires intent but defines the mens rea as "acting *purposefully* or *recklessly*." *Id.* (emphasis added). By restricting speech with a "pernicious history . . . of impending violence" and requiring reckless intent, CADS does not violate the First Amendment under this Court's true threat doctrine. *Black*, 538 U.S. at 363; *see id.*

ii. The speech prohibited by CADS also escapes First Amendment protection as inciteful language because it provokes an immediate violent response once consumed by the listener.

Moreover, this Court has made clear that freedom of speech must yield to a state's exercise of police power when an individual acts against the interests of public welfare by inciting violence. *Whitney v. California*, 274 U.S. 357, 371 (1927) ("[T]he Constitution does not confer an absolute right to speak, without responsibility"); *Brandenburg*, 395 U.S. at 447 (approving restrictions on speech "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"). As such, states remain free to proscribe speech that aims to provoke imminent lawless action and is likely to do so. *Brandenburg*, 395 U.S. at 447.

When evaluating a statute that regulated incitement, the *Brandenburg* court devised a standard that demands heightened contextual analysis. *Id.* at 447-48 (devising a test that examines both the speaker's intent and the speech's likely effect on the listener). Consequently, subsequent cases of this Court employing the *Brandenburg* test for incitements stand inapposite. *See e.g.*, *Hess v. Indiana*, 414 U.S. 105, 108-09 (1973) (finding in-person speech unlikely to produce imminent lawless action when it merely advocated "illegal action at some indefinite future time"); *NAACP*

v. Claiborne Hardware Co., 458 U.S. 886, 928 (1982) (determining that "[t]he emotionally charged rhetoric" of an in-person speech "did not transcend the bounds of protected speech").

Electronic speech governed by CADS differs from spoken word communication in two primary respects. First, internet speech often results in a time delay between the act of speaking and the speech's consumption by the listener. John P. Cronan, *The Next Challenge for the First Amendment: The Framework for an Internet Incitement Standard*, 51, CATH. U. L. REV. 425, 450 (2002). And second, the exact audience of internet communications is relatively unknown when compared to in-person speech. *Id*. at 452. Therefore, a *Brandenburg* analysis of CADS must be conducted from the perspective of the listener on the internet, rather than the speaker. *See id.* at 456 ("The lawless action targeted by the [*Brandenburg*] Court occurs after the words are heard, not after they are spoken.")

Here, both the language of the statute and the history of doxxing in Delmont illustrate that CADS prohibits only the intentional dissemination of speech likely to cause unrest once consumed by the listener. Firstly, the language of the statute, itself, requires that the speaker act "purposefully or recklessly." R. at 6. And secondly, the record illustrates that, once consumed by its target audience, "doxxing" messages provoke an immediate, and often violent, response. *See id.* at 5-6 (noting that "flash shares" resulted in "wave[s] of physical confrontations, calls, and e-mail or social media messages"). Importantly, this swarming of unsuspecting victims occurred in such a short period of time that "the police could not intervene in time." *Id.* at 6. This rapid, coordinated response separates CADS from the request for "indefinite" action allowed in *Hess v. Indiana.* 414 U.S. at 109. Instead, Delmont's "doxxing" context is akin to a protester verbally advocating for the harassment of a specific individual, and then having their request carried out as soon as they step down from the podium. Therefore, this Court should avoid immunizing electronic incitements

altogether, and hold that CADS prohibits only improper incitement language, thereby removing its restrictions from First Amendment analysis.

B. CADS passes intermediate scrutiny for restrictions on Free Speech because the law addresses only the mode of speech and affects speech only incidentally.

Even if this Court finds that CADS prohibits neither "true threats" nor inciteful language, the Court should still hold that the statute passes First Amendment muster under intermediate scrutiny. This Court applies intermediate scrutiny in two situations. *See Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 623 (1994); *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 471 (2025). First, intermediate scrutiny applies when a regulation of speech is not based on content, but rather on the mode or manner of the speech itself. *Ward*, 491 U.S. at 791. Second, intermediate scrutiny also applies when a restriction on speech has "only an incidental effect on protected speech." *Paxton*, 606 U.S. at 478. CADS mandates applying intermediate scrutiny under both circumstances.

A regulation is content-neutral if it merely controls how speech may be communicated without "hostility–or favoritism–towards the underlying message expressed." *R.A.V.*, 505 U.S. at 386. For example, in *Ward v. Rock Against Racism*, this Court applied intermediate scrutiny to sound amplification guidelines for a bandshell because the government's purported interest in protecting the quiet character of a public park was unrelated to the content of the music onstage. 491 U.S. at 791-92. Furthermore, a statute has an incidental effect on free speech when, in the pursuit of a goal unrelated to the prohibition of free speech, some speech interests are affected incidentally. *Paxton*, 606 U.S. at 478-79. To illustrate, in *Free Speech Coalition, Inc. v. Paxton*, this Court applied intermediate scrutiny to examine an age-verification feature for sexually explicit content online. *Id.* Even though the regulation appeared to regulate along the basis of content by making it more difficult for adults to access explicit content, this Court employed intermediate

scrutiny because children did not have a similar right to view that content. *See Paxton*, 606 U.S. at 482-83.

Here, CADS is content-neutral because it restricts only *how* speech may be communicated. Just as the guidelines in *Ward* affected the way music could be played, CADS affects only the way "private information" may be divulged to the public. *See* 491 U.S. at 791-92. CADS does not prohibit all sharing of private information but rather controls how that information is released to the public. *See* R. at 6 (prohibiting only the sharing of private information through a *communication platform*). Moreover, to the extent that CADS hinders the dissemination of matters of public concern, it does so incidentally. As affirmed by the Governor of Delmont, the primary aim of the statute was to minimize violent harm. *See id.* at 47-48 (stating that the legislature enacted CADS "to address the specific disclosure practice" that resulted in an "extremely volatile" environment). Furthermore, like the adults in *Paxton*, the citizenry is not altogether foreclosed from viewing the underlying source material that brought the individual into public view. *See id.* at 5-6 (containing no provision within CADS regarding political speech). Thus, any effect on political speech is both secondary and minimally intrusive.

Having established the applicability of intermediate scrutiny, this Court should hold that CADS passes said scrutiny considering its legislative aim of ensuring public welfare and the inefficacy of alternative measures. Under intermediate scrutiny, a statute is constitutional if it promotes an important government interest that "would be achieved less effectively absent the regulation" and the regulation "does not burden substantially more speech than is necessary to further that interest." *TikTok Inc. v. Garland*, 604 U.S. 56, 70 (2025) (citing *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 189 (1997)). The statute "need not be the least restrictive" means of furthering that interest. *Ward*, 491 U.S. at 798.

Here, CADS serves a legitimate interest in ensuring public safety when other means of doing so proved insufficient. The state of Delmont passed CADS to stem the tide of violence that came in the wake of a 150 percent increase in doxxing occurrences. R. at 6. Given this Court's exclusion of some speech from constitutional protections due to the harm it causes, First Amendment precedents regard public safety as a prime interest of the government. *See Black*, 538 U.S. at 362-63; *Brandenburg*, 395 U.S. at 447. Furthermore, alternative measures to address doxxing-related altercations "did not address" the threat to public safety. R. at 48 (noting that "CADS was drafted to be narrow" by focusing on only "the nonconsensual dissemination" of information "in defined, sensitive contexts"). Because existing provisions required the escalation of harm "before relief was available," CADS acted as the only viable means of ensuring public safety. *Id.* This Court should hold that CADS satisfies intermediate scrutiny by striving to ensure public safety when existing laws proved unable to do so.

C. CADS also passes strict scrutiny for restrictions on Free Speech because of the strict mens rea requirement, the insufficiency of alternative means of controlling Delmont's volatile campus environment, and Delmont's compelling interest in protecting its citizens from harm.

Lastly, even if the Court determines that this case requires strict scrutiny analysis, CADS should be upheld. This Court permits content-based restrictions on speech under strict scrutiny when the prohibition "is narrowly tailored to serve a compelling interest." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444 (2015). A law serves a compelling interest when it aims to protect a vulnerable group from physical harm; and that same law is narrowly tailored when the compelling interest may only be achieved by closing the distribution network of communications that places the vulnerable group at risk of harm. *New York v. Ferber*, 458 U.S. 747, 758-60 (1982). CADS satisfies both arms of this standard.

For instance, in *New York v. Ferber*, this Court determined that a statute prohibiting the knowing promotion of sexual performances by children survived constitutional scrutiny even though "the statute . . . prohibits some conduct that is protected by the First Amendment." 458 U.S. at 778 (Stevens, J., concurring). This Court rested its holding on two fundamental conclusions. First, "legislation aimed at protecting the physical and emotional well-being of" a constitutionally protected group, children, in this case, is compelling. *Id.* at 557. Second, preventing the physical and emotional harm caused to children by pornography would be "difficult, if not impossible" without blockading the distribution network for such materials at the speech's conception. *Id.* at 759-60. Because "the only practical method of law enforcement [was] to dry up the market" for materials that endangered a compelling state interest, the restriction on speech passed strict scrutiny. *Id.* at 760.

Here, CADS serves a similar compelling interest in public welfare by drying up the market for speech that threatens that interest. This Court has delineated a clear interest in protecting ordinary citizens from harm. *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (recognizing "the legitimacy of the government's interests in ensuring public safety and order"). The prevalence of doxxing and frequency of attacks in Delmont invoke a clear state interest in protecting the citizenry. *See* R. at 48 (concluding that available law enforcement tools "did not address the initial disclosure that created the risk" of physical harm). The inability of law enforcement to prohibit these violent altercations also supports the legislature's finding that "the only practical method of law enforcement [was] to dry up the market" for doxxing by prohibiting a narrow category of speech. *Ferber*, 458 U.S. at 760; *see id.* Therefore, this Court should hold that CADS does not violate First Amendment Free Speech rights by virtue of passing strict scrutiny.

II. THE FIFTEENTH CIRCUIT PROPERLY HELD THAT CADS DOES NOT INFRINGE UPON THE CHURCH OF LIGHT'S CONSTITUTIONAL RIGHT TO FREE EXERCISE OF RELIGION.

CADS does not violate the Free Exercise Clause because CADS is both neutral and generally applicable in regard to religious exercise. While the Constitution mandates that "Congress shall make no law . . . prohibiting the 'free exercise' of religion, the government remains free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable. *Mahmoud v. Taylor,* 606 U.S. 522, 564 (205); *Employ. Div. v. Smith*, 494 U.S. 872, 879 (1990). Here, CADS is neutral on its face and as applied to the Church. CADS is also generally applicable to religious and nonreligious actions.

Moreover, CADS aims to further a stated interest in public safety by preventing doxxing and its associated violence and harassment. Thus, CADS satisfies rational basis review. And, even if reviewed under strict scrutiny, Delmont's interest in public safety and crime prevention are compelling state interests, to which CADS is narrowly tailored through limited contextual application, a specific intent requirement, and evaluation of alternatives.

A. Neutral and generally applicable laws that incidentally burden religion are subject to rational basis review rather than strict scrutiny.

Neutral and generally applicable laws that burden religion only incidentally are subject to rational basis review. The Free Exercise Clause does not create a right to ignore valid neutral, generally applicable laws. *Smith*, 494 U.S. at 879. As such, there is no First Amendment Right to avoid laws that apply to every other actor on the grounds that the law proscribes conduct that his religion requires. *See id.*; *Religion Governed By the Rule of Law*, 39 HUMAN RIGHTS 7.I. This Court solidified this principle in *Smith*, where drug counselors were fired for using the illegal drug peyote, and thereafter denied unemployment compensation because of said drug use. *See* 494 U.S. at 872. The *Smith* court held that, because the drug law applied to all citizens uniformly, the law

does not violate the Free Exercise Clause even if the law incidentally burdened religious conduct. *Smith*, 494 U.S. at 872; *see also Reynolds v. United States*, 98 U.S. 145 (1878) (holding a member of the Church of Jesus Christ of Latterday Saints did not have a free exercise defense to anti-polygamy law).

Even in adverse cases, this Court has repeatedly affirmed the ability of the government to impose incidental, permissible burdens on religion. *See e.g.*, *Church of Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 531 (1993) ("Our cases establish […] that a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice."); *Fulton v. City of Phila*., 593 U.S. 522, 533 (2021) ("*Smith* held that laws incidentally burdening religion are ordinarily not subject to strict scrutiny […] so long as they are neutral and generally applicable."); *Stormans, Inc. v. Wiesman*, 579 U.S. 942, 952 (2016) (analyzing neutrality and general applicability). Thus, neutral and generally applicable laws that incidentally burden religion are not subject to strict scrutiny. *Smith*, 494 U.S. at 878-82; *Wiesman*, 579 U.S. at 952-53. Instead, as other constitutionally permissible laws are, laws that only incidentally burden religious exercise are subject to rational-basis review. *Smith*, 494 U.S. at 878-82; *City of Boerne v. Flores,* 521 U.S. 507, 514 (1997).

B. CADS is a neutral and generally applicable law, both on its face and as applied to the Church of Light.

CADS is neutral both on its face and as applied to the Church. CADS also applies equally to both religious and non-religious persons, as it lacks any mechanism for individualized exceptions to its enforcement. Lastly, the burden of this neutral and generally applicable law on the Church is incidental, if any, and wholly distinct from the unique burden in *Wisconsin v. Yoder.* 406 U.S. 205, 206 (1972).

i. CADS is neutral because it neither makes explicit reference to religion nor targets religious individuals.

First, CADS is neutral because the text makes no reference to either the Church or religion more generally. When examining neutrality, "the minimum requirement . . . is that a law not discriminate on its face." *Lukumi,* 508 U.S. at 533. Thus, the Court should first look to the text of the Delmont Statute and its relevant context. *Id.* Both the District Court and the Fifteenth Circuit correctly assert that CADS does not discriminate on its face. R. at 21, 38 ("the text of the statute makes no reference to religion, nor does it prohibit the disclosure of private information only by religious persons.") Furthermore, CADS "certainly avoids any language targeting the Lightbearers specifically." *Id.* at 38; *see* Del. Ann. Stat. § 163.732 (2020) (making no reference to Lightbearers, the Church, or religion). This follows logically, as many of the public safety concerns arose from actions unaffiliated with religious exercise. *See* R. at 5-6.

Moreover, because the Free Exercise Clause protects against both overt and covert religious discrimination, this Court also requires that laws must "be applied in a manner that is neutral toward religion." *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617, 617 (2018); *see Lukumi,* 508 U.S. at 534. Factors relevant to the assessment of 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 decision making body." *Masterpiece*, 584 U.S. at 639 (quoting *Lukumi*, 508 U.S. at 540).

For example, in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, this Court found that a civil rights law was not neutrally applied. *Id.* at 635-36. When examining comments made by Colorado's Civil Rights Commissioners at a public hearing, this Court found several remarks made by one commissioner to be disparaging of the Plaintiff's faith. *Id.* at 635-36. This commissioner described sincerely held religious beliefs being used to hurt others as "one

of the most despicable pieces of rhetoric that people can use," and stated that "freedom of religion has been used to justify all kinds of discrimination [...] whether it be slavery [or] the holocaust." *Masterpiece*, 584 U.S. at 635. Consequently, the Court determined these comments to demonstrate a lack of neutrality in application of the law towards the Plaintiff and their religious exercise. *Id.* at 636.

Here, the record is absent of any large or even "subtle departure[s] from neutrality" by the state of Delmont in the passage of CADS. *Lukumi*, 508 U.S. at 533. Delmont's Governor affirmed that the Delmont State Legislature enacted CADS to address doxxing only; and, Delmont only enacted CADS after "campus conditions became extremely volatile." R at 47-48 (noting that classes were disrupted and students were ambushed at their residences). Petitioner does not allege that any Delmont state actor made contemporaneous statements akin to those in *Masterpiece. See* 584 U.S. at 635, 639. The controversy inciting the campus conditions was a political dispute about energy usage, not religious in nature at all. *See generally* R. at 4-5.

Furthermore, CADS targets neither the Lantern's core purpose nor its mode of dissemination. Considering, "only beliefs rooted in religion are protected by the Free Exercise Clause," purely secular views do not suffice. *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 713 (1981); *Yoder,* 406 U.S. at 215-216. States are entitled to assure themselves that there is an ample predicate for invoking the Free Exercise Clause, and this Court has recognized the difficulty of distinguishing between religious and secular convictions and in determining whether a professed belief is sincerely held. *Frazee v. Ill. Dep't of Emp't Sec*., 489 U.S. 829, 833 (1989).

Here, CADS targets specific non-religious conduct: the nonconsensual flash sharing of information, with specific intent to harm campus affiliated individuals. *See* Del. Ann. Stat. §

163.732. The Church makes no claim that a tenet of their sincerely held religious beliefs is to distribute *The Lantern* with such intent to harm, with information of such campus affiliated persons, or to do so nonconsensually. *See generally* R. at 8-9, 45-46. If they desire, the Church may still distribute information, on their LED Screens, about campus affiliated individuals without the intent to harm or with their consent. Moreover, the Church may still distribute information about non-campus affiliated individuals. Though the Church missionaries who attend DSU have taken the side of the energy coalition, there is no evidence or allegation by Petitioners that this specific political belief is inherent to their religious exercise. *See id.* at 10, 45-46. There is no evidence that Delmont was targeting core beliefs or practices of the Church; rather, Delmont took care to craft a statute to avoid sweeping in the Church's free exercise of their religion.

ii. CADS is generally applicable because it lacks any mechanism for individualized exceptions.

Second, CADS is generally applicable to both religious and non-religious actors. In *Fulton v. Philadelphia*, this Court held that a law is not generally applicable if the law provides for a "mechanism for individualized exceptions." 593 U.S. 522, 533 (2020). In *Fulton*, a foster care statute incorporated a system of individual exemptions made available at the "sole discretion" of a commissioner. *Id.* at 535. Here, however, CADS has neither explicit exemptions, nor any opportunity for any state actor to exercise discretion over enforcement of its provisions. *See* Del. Ann. Stat. § 163.732.

This Court has also held that a law lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way. *Fulton*, 593 U.S. at 534; *see Lukumi*, 508 U.S. at 542-46. Again, CADS prohibits very specific non-religious conduct, doxxing, from religious and nonreligious actors. CADS makes no

distinctions along religious lines, and the Church makes no claim that doxxing is a genuine religious practice. *See generally* R. at 45-46.

iii. CADS does not impose a burden on the Church akin to the burden in Yoder.

Third, CADS does not impose a unique burden on the Church akin to that in *Yoder.* 406 U.S. at 205. In *Yoder*, the burden imposed by the state's compulsory school attendance law was characterized by this Court as "not only severe, but inescapable" because it compelled students, "under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Id.* at 218. The Amish community must "either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region." *Id.* When a burden imposed by the state is of the same character as that imposed in *Yoder,* "we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Taylor*, 606 U.S. at 564.

Here, the case before the Court is distinct from *Yoder* for three reasons. First, CADS is a private right of action, not a criminal sanction. R. at 6 (providing for injunctive and monetary relief). Second, for the reasons discussed at length above, CADS is not a severe or inescapable restriction, but rather a narrow prohibition of inciting conduct and only in a campus-related context. And third, as the Fifteenth Circuit recognized, this Court in *Smith* described *Yoder* as an outlier case due to the combination of free exercise rights and parental rights at issue in the case. *Smith*, 494 U.S. at 881 (asserting neutral, generally applicable laws only violate Free Exercise when the case involves "not the Free Exercise Clause alone, but . . . other constitutional protections, such as the right of parents"). Parental rights are not at issue here, further differentiating the burden in *Yoder*, from the incidental burden, if any, imposed by CADS.

C. As a neutral and generally applicable law, CADS satisfies rational basis review because it promotes the compelling state interest of ensuring public safety.

To satisfy rational basis review, CADS must only be rationally related to Delmont's legitimate interest. *See Box v. Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 492 (2019). A law is upheld under rational basis review "if there is any reasonably conceivable state of fact that could provide a rational basis" for its enactment. *Paxton*, 606 U.S. at 471-72. Therefore, even if CADS is not perfectly tailored to Delmont's declared objective, the state need not draw a perfect line, as long as the line actually drawn is a rational one. *Box*, 587 U.S. at 492.

Here, Delmont's stated purpose in enacting CADS was to ensure the safety of its citizens against doxxing. Delmont sought to create a private cause of action against any individual who, without consent, discloses private information of an enrolled student with the intent to stalk, harass, or physically injure that student. R. at 48. There is no doubt that public safety is a rational basis upon which Delmont can legislate. *See N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S. 1, 132 (2022) (holding public safety and crime prevention to be compelling governmental interests); *United States v. Salerno*, 481 U.S. 739, 755 (1987); *District of Columbia v. Heller*, 554 U.S. 570, 689 (2008). Since the restriction on doxxing responded directly to the violence, discrimination and volatile campus conditions, CADS is unquestionably rationally related to the public safety interest. R. at 47-48. Thus, CADS satisfies rational basis review.

D. Even if subjected to strict scrutiny, CADS passes constitutional muster because it advances the state's compelling interest in ensuring public safety where other means of doing so proved insufficient.

Moreover, even if the court determined that CADS is subject to strict scrutiny, this Court should still hold that CADS does not violate the Free Exercise Clause. To pass strict scrutiny, this Court requires the law must serve a compelling government interest and must be narrowly tailored to further said interest. *Pena,* 515 U.S. at 235; *Bruen*, 597 U.S. at 18-19. Delmont's purported interest in enacting CADS, public safety, is a compelling state interest. *See* Del. Ann. Stat. § 163.732; R. at 6, 27, 42; *Bruen,* 597 U.S. at 132. CADS is narrowly tailored to serve Delmont's

public safety interest for three reasons: CADS is confined to a campus context, the specific intent requirement, and Delmont's evaluation of alternatives prior to passage of CADS.

First, CADS is narrowly tailored to promote Delmont's compelling interest in campus safety. Permissible, narrowly tailored regulations seek to target and eliminate no more than the exact source of evil it seeks to remedy. *Schultz*, 487 U.S. at 485; *see Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm'n,* 605 U.S. 238, 253 (2025); *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). Here, Governor Morrison took careful consideration to limit the applicability of CADS to a volatile campus context. R. at 48. CADS only applies to nonconsensual sharing of information regarding enrolled students, faculty and staff members at a Delmont college or university. Del. Ann. Stat. § 163.732; R. at 48. Delmont legislators targeted this law at Delmont campuses given the explosive campus condition. R. at 5, 47-48. These instances of doxxing "were almost exclusively on Delmont college campuses." *Id.* at 6. As such, CADS is a balanced provision that targets only sharing of nonconsensual information from campus affiliated individuals, where tensions flamed the highest. *See id.* at 48.

Second, CADS creates a cause of action only against those with specific intent to "purposefully or recklessly place a person in reasonable fear of bodily injury, death, or property damage as to cause severe emotional distress to such person." Del. Ann. Stat. § 163.732. Rather than penalize mere negligence, CADS's elevated mens rea requirement further narrows the scope of the regulation so that it again only targets the specific public safety issue in Delmont.

Third, CADS was only enacted after less restrictive alternatives proved unsuccessful. R. at 48. Narrow tailoring requires the government to show that measures less restrictive of the First Amendment activity could not address its stated interest. *Tandon v. Newsom*, 593 U.S. 61, 63 (2021). Here, Delmont's Governor and relevant agencies tested multiple alternative policies. R. at

48 (evaluating nonbinding institutional guidance and enhanced enforcement of existing criminal and campus safety measures). Existing enforcement of harassment, stalking, trespass, and disorderly conduct provisions failed to protect the citizenry because they "required harm to occur or escalate before relief was available." R. at 48. Thus, CADS, as the least restrictive but most effective means available, is narrowly tailored to address the initial doxxing practice that creates the risk to safety.

III. THE COURT SHOULD NOT RECOGNIZE THE CHURCH OF LIGHT'S CLAIM THAT CADS RUNS AFOUL OF A "HYBRID RIGHTS" EXCEPTION.

Lastly, the posited "hybrid rights" exception should not apply to this case because it is both analytically redundant and factually inapplicable to this case. In *Smith*, this Court reasoned that the First Amendment may bar application of a neutral, generally applicable law if said law involves Free Exercise concerns in conjunction with other constitutional protections. 494 U.S. at 881 (suggesting hybrid rights were present in *Yoder* and providing additional precedents in which the Court analyzed potential hybrid right exceptions). In sum, "hybrid rights" proposes that Free Exercise claims deserve heightened scrutiny if combined with an independent constitutional claim. Hope Lu, Comment, *Addressing the Hybrid-Rights Exception: How the Colorable Plus Approach Can Revive the Free Exercise Clause*, 63 CASE W. RES. L. REV. 257, 258 (2012).

This exception, however, remains theoretical. This Court has declined to recognize the applicability of the hybrid rights exception to any case since *Smith* was handed down. R. at 40; *see, e.g.*, *Taylor*, 606 U.S. at 565 n.14 (declining to consider whether the case qualified as a hybrid rights case). Even in *Smith*, itself, the Court declined to recognize a claim of hybrid rights. 494 U.S. at 881. Therefore, while this Court has recognized the potential for the exception's application, no set of facts in the nearly four decades following *Yoder* have warranted the elevation of the hybrid rights exception beyond pure theory. *See* R. at 40; *Smith*, 494 U.S. at 881.

Justice Souter provides a clear assessment of the hybrid rights exception post-*Smith*, declaring hybrid rights to be "ultimately untenable." *Lukumi*, 508 U.S. at 567 (Souter, J., concurring in part and in judgment). Because "a hybrid claim is one in which a litigant would actually obtain an exemption . . . under another constitutional provision, there [is] no reason for the Court . . . to have mentioned" Free Exercise rights at all. *Lukumi*, 508 U.S. at 567; *see also Kissinger v. Bd. of Trs. of Ohio State Univ.*, 5 F.3d 177, 180 (6th Cir. 1993) (finding the theory to be "completely illogical"). Thus, if implemented, the hybrid rights exception "would probably be so vast as to swallow the *Smith* rule" altogether. *Id.*

Here, the Court should decline to extend the narrow, posthumous declaration of hybrid rights present in *Yoder* to a factually distinct situation here. As argued above, the burden on religious exercise in *Yoder* is distinct from the burden on the Church of Light. Additionally, the Court need not reach the hybrid rights doctrine to appropriately evaluate both the Free Speech claim and Free Exercise claim in conjunction. The Fifteenth Circuit correctly stated that "it is not at all clear that the hybrid-rights doctrine will make any real difference in the end" after evaluating each claim on its own merits. R. at 41. The facts before the Court do not require us to "swallow the *Smith* rule," thereby upending the balance of Free Exercise jurisprudence. *Lukumi,* 508 U.S. at 567 (Souter, J., concurring in part and in judgement).

CONCLUSION

For the foregoing reasons, the Court should reverse the judgement of the Fifteenth Circuit.

Respectfully Submitted,
/s/ Team 32
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APPENDIX

First Amendment to the Constitution of the United States of America 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 assembly, and to petition the government for a redress of grievances.

Team 32 Certification

This is to certify the work product contained in all copies of Team 32's brief is in fact the work product of the team members. Team 32 has complied fully with its law schools' governing honor code. Team 32 has complied with all of the Competition Rules.

Respectfully Submitted,
Team 32