No. 22-CV-7654

In the

Supreme Court of the United States

WILLLIAM WALLACE, *Petitioner*,

v.

POSTER, INC., *Respondent.*

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

RESPONDENT'S BRIEF

TEAM 18
Attorneys for Respondent

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QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that the Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120, is unconstitutional because it violated Poster's free speech rights; and

II. Whether the United States Court of Appeals for the Fifteenth Circuit erred in finding that the Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120, is neither neutral, nor generally applicable, and is thus unconstitutional.

STATEMENT OF JURISDICTION

The Fifteenth Circuit Court of Appeals entered its judgment on this case. Petitioners filed for a Writ of Certiorari, and this Court granted the petition. This Court has jurisdiction under 28 U.S.C. § 1254 (2019).

SUMMARY OF ARGUMENT

I. The Delmont Common Carrier Law is unconstitutional because it violates free speech rights.

The Fifteenth Circuit was correct in finding that the Delmont Common Carrier Law violated Poster's free speech rights. Poster does not believe it qualifies as a "common carrier" as outlined in the statute however because it is notably different than prior designated common carriers. Moreover, even if Poster is found to be a common carrier by the court, its notable distinctions – such as the nature of the public services they provide – awards them a degree of free speech protections. Therefore, this Court should uphold the ruling of the Fifteenth Circuit.

II. The Delmont Common Carrier Law is unconstitutional because it violates the First Amendment Free Exercise Clause by burdening religion without being neutral or general applicable.

The Fifteenth Circuit was also correct in finding that the Delmont Common Carrier Law's prohibition on religious, civic, and philanthropic donations by "common carriers" violates the First Amendment Free Exercise Clause because the law is neither neutral or generally applicable. The law is not neutral because the American Peace Church was targeted specifically, and is not generally applicable because of uneven enforcement, it's applicability to only one company, and the dubious reason given for the non-contribution provision. Therefore, this Court should uphold the ruling of the Fifteenth Circuit.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

I. AMENDMENT I. ESTABLISHMENT OF RELIGION; FREE EXERCISE OF RELIGION; FREEDOM OF SPEECH AND THE PRESS; PEACEFUL ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES

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.

II. Delmont Common Carrier Law, Delmont Rev. Stat. § 9-1.120.

STATEMENT OF THE CASE

Procedural History

After Delmont's 'immense' fine, Poster brought this suit against Will Wallace, contesting both its status as common carrier and its violation of free speech and religion. Trial court granted Delmont summary judgement and held that (a) poster is a common carrier, (b) their speech rights were not violated because of common carrier status and, (c) The CC law is neutral and generally applicable and not violative of Poster's rights. Poster appeals on all counts.

Poster filed an appeal in the Fifteenth Circuit after Delmont won in District Court. Poster argued that the court failed to appreciate its First Amendment free Speech Rights when analyzing its status as a common carrier, and that the court erred in saying that Delmont's law was 'neutral and generally applicable.

The Fifteenth Circuit agreed that Poster is a common carrier, but with some qualification. They stated that this is because Poster does not function exclusively as an expressive conduit for other's artistic speech, since it has other functions such as the APC promos, donations to the APC church, user agreement that states it has a right to remove content. Further, the Court stated that though Poster has not always exercised the editorial control they claim to have it does not mean they lose their right to exercise such discretion. Court called them a 'hybrid carrier' and stated that this status allows them free speech rights

The Circuit Court also concluded that the Delmont CC Law is not neutral, because they discriminate against religion on its face. The Court also stated that the law is not generally applicable. They stated that Delmont's actions were the first time the law was enforced and thus intolerant of religious beliefs making it more than a subtle nod from neutrality. The Court stated

that the CC law was targeting Poster's religion. In conclusion they found that the Delmont CC Law is neither neutral, generally applicable and Reversed the Fifteenth Circuit decision.

Statement of Facts

The American Peace Church, founded in 1898, has had the storied history of being both a church, and a great benefactor of the arts and literacy. [1]. They established lending libraries in impoverished communities, along with other programs supporting artists and musicians.[2] With the advent of the World Wide Web, they decided to engage in an effort to allow self-publication of artists and musicians work. This effort became Poster Inc., a now leading self-publication platform.[3]

Poster's purpose is dual- to act as both a conduit for self-expression and self-publication, and the means to promote the American Peace Church's positions on pacifism.[4] For this reason, Poster's Terms & Conditions provide that Poster retains the right to deny any publication of its work, and terminate any account for any reason it deems sufficient.[5] Prior to the events leading to this litigation, Poster Inc. had exercised this option once before.[6]

During the election campaign of now Governor Louis F. Trapp, Governor Trapp made a number of statements indicating that he intended to pass a law that would force platforms like poster to not "stifle viewpoints they disagreed with."[7] After the law was passed, a Ms. Katherine

[1] *Seigenthaler-Sutherland Cup Problem* (2021). Page 2.
[2] *Id.* At 3.
[3] *Id.* At 2.
[4] *Id.*
[5] *Id.* At 37.
[6] *Id.* At 6.
[7] *Id.* At 34.

Thornberry posted a status update indicating that her book had a new title- "Blood is Blood."[8] She had posted this status update at a violent uprising conducted by animal activists that resulted in a Delmont Police Officer losing sight in one eye.[9]

Poster, not wishing to be compelled into endorsing speech violative of their pacifist values, suspended Ms. Thornberry's account until she deleted the post.[10] After this, Will Wallace, in his capacity as Attorney General held a press conference, and announced that he was intending on bringing an enforcement action against Poster, in the form of hefty fines.[11]. The first words out of his mouth at this press conference were "The *APC- founded Poster platform"* singling out the Church.[12]

[8] *Id.* At 4.
[9] *Id.*
[10] *Id.* At 6.
[11] *Id.* At 32.
[12] *Id.*

ARGUMENT

I. Poster is entitled to free speech protections under the First Amendment because it is a corporation and does not fall under the traditional analyses for a common carrier.

The distinctively unique publishing component makes Poster clearly different from preceding common carriers.[13] Poster maintains that it has never operated as simply a platform for the public to use as a form of communication. In fact, it is a niche corporation that focus on artists. All users agree to the terms and conditions of editorial control when signing up. Further, the company as always functioned as an associate to APC – this is not new to anyone who uses the services. These facts intitle Poster to free speech rights as a corporation and not a common carrier.

However, if the Court finds that Poster is a common carrier given these facts, it is still entitled to First Amendments protections. The corporation functions as a hybrid common carrier since it has always maintained control over editorial discretion. Denying Poster free speech rights would prohibit Poster from a fundamental right awarded to corporations from the Constitution.[14]

A. Poster is entitled to free speech rights as a corporation

The United States extends free speech rights to corporations. Black's Law Dictionary broadly defines a corporation as "a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural

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[13] James B. Speta, *A Common Carrier Approach to Internet Interconnection*, 54 Fed. Comm. L.J. 225, 227, 251–52 (2002).

[14] *Biden v. Knight First Amendment Institute at Columbia University*, 141 S. Ct. at 1224 (Thomas, J., concurring) (emphasis added) (citing United States v. Stevens, 559 U.S. 460, 468 (2010)

persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it."[15]

The Courts have understood the First Amendment to protect the corporate identity.[16] Even in cases where the use of the speech was in question, this Court found that speech protections extend.[17] For example, when an appellants contended that the advertisement of prescription drug prices is outside the protection of the First Amendment because it is "commercial speech," this Court found that a corporation does not lose its speech rights because money was spent related to it.[18]

There is no dispute that Poster is a corporation. Poster is registered as a company in the state of Delmont, pays both state and federal taxes, and makes profit though is legal corporate status. Since Poster is a corporate entity, it is entitled First Amendment protection as outline by this Court. Poster has the right to engage in free speech as a corporate identity in numerous ways. Though its common carrier status is in dispute, Poster's corporate statutes is clear. Delmont has not brought forth any issues with the legality of Poster's company status. However, its common carrier status is more unclear. Even if this Court cannot make a statutory decision on Poster's free speech rights due it the unclarity of the common carrier application, it may focus on Poster's corporate status.

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[15] CORPORATION, Black's Law Dictionary (11th ed. 2019).
[16] *First Nat'l Bank v. Bellotti*, 435 U.S. 765.
[17] *Id*.
[18] *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

B. Since Poster does not function exclusively as an expressive platform for other's artistic speech, it does not qualify as a traditional "common carrier"

The Courts have looked at three separate factors when determining whether a company qualifies as a common carrier. First, they look to is if the company is open to the public.[19] Second, they can look at the level of market shares the company has.[20] Finally, they have looked at the consumer has other alternatives.[21] These factors are applied differently depending on the operations of the business. Since Poster's business model operates functionally different than that of a typical common carrier, we ask that this Court reverse Poster's common carrier status.

1. Poster is not a common carrier because it was created as a service for artists to self-publish.

Historically, a company can be understood to be a common carrier if it "holds himself out to carry goods for everyone as a business."[22] This standard is still examined in common carrier cases today.[23] However, as discusses in *Knight v. Biden*, there is no legislative basis for finding media companies, like Twitter and Poster, common carrier status to constrain them.[24] In *Knight*, this Court examined if Twitter's accessibility to the public allowed it to be considered a common carrier.[25]

Poster has a distinct difference than the platforms discussed in *Knight*. Unlike Facebook, Twitter, and Google, Poster does not just pass information through users but functions as a self-

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[19] *Ingate v. Christie*, 175 Eng. Rep. 463, 464 (N.P. 1850).

[20] *United States v. Aluminum Co. of America*, 148 F.2d 416, 424.

[21] *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1225 (2021).

[22] *Ingate v. Christie*, 175 Eng. Rep. 463, 464 (N.P. 1850).

[23] *See Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1225 (2021) (stating that some courts have only looked to see if the company holds its available to the general public).

[24] *Id*.

[25] *Id*.

publication for artist. Though the public may look to see these publications, it is not a social media site or a search engine. It is way for artists to jumpstart an audience for their work. Poster is more similarly analogous to a bookstore. It has publication that are available, but the bookstore owner has the discretion to include, or exclude, which books it wishes to carry. In this way, just as a bookstore maintains free speech rights, so does Poster.

2. Though Poster had majority of the market share, it does not meet the necessary qualifications.

Courts have looked at the amount of market shares when deciding if a company is a common carrier. This Court has stated that the two basic signs of monopoly power are size and vertical integration.[26] Further, the Courts have found that the percentages of market shares are a helpful indicator. For example, the Second Circuit has stated that ninety percent is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly, thirty-three per cent is not.[27] Currently, Poster hold 77% of the total market shares. This number seems to fall within the range that the common carrier standard is not met. This leaves ambiguity for the Court to examine. When applying the totality of the facts involving this case, the market share test is not convincing enough for Poster to lose its First Amendment rights.

3. Poster is not the only self-publishing option for artists

For a company to avoid "common carrier" status, they must show that the consumer has a feasible alternative.[28] A feasible alternative includes a produce than can provide the consumer

[26] . *United States v. Aluminum Co. of America*, 148 F.2d 416, 424.
[27] *United States v. Aluminum Co. of America*, 2 Cir., 1945, 148 F.2d 416, 424.
[28] *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1225 (2021) (Thomas, J., concurring).

with a similar enough server.[29] Further, the company must be a public company that is accessible to all. Poster has always operated the same. Poster has not function *exclusively* as an expressive conduit for others' artistic speech at any point during its formation and business practices. Further, as discussed above, Poster's status as common carrier company has not been established by the court. Further, Poster's market shares are significantly less than those discussed in *Knight*. Though Poster maintains a majority of the market share meaning that the remaining shares are available to the consumer.

C. Even if Poster is considered a "common carrier" they are entitled to free speech rights

Even if the court finds that Poster is a common carrier, the analysis that the Fifteenth Circuit is the properly interprets Poster's free speech rights. There is a wide array of First Amendment protections that have been granted to companies that have been found to be common carriers. For example, the Court found that even broadcasters that engaged in independent form of communicative activity have First Amendment protections.[30] This Court looked to see what extend broadcasters were able to exercise their first Amendment rights. After making a distinction between a common carrier and broadcasting, the Court stated that broadcasters are "entitled under the First Amendment to exercise 'the widest journalistic freedom consistent with their public [duties]."[31] With the public's interest in mind, this Court focused on the importance of a balanced presentation of views that was done though relying in upon the editorial initiative and judgment of the broadcasters who bear the public trust.[32]

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[29] *Id*.

[30] *FCC v. League of Women Voters of California*, 468 U.S. 364, 378 (1984).

[31] *League of Women Voters of California*, 468 U.S. 364, 378 (1984) (quoting *Columbia Broadcasting System, Inc. v. Democratic National Committee*, supra, at 110, 93 S.Ct., at 2090).

[32] *Id*.

This Court has also acknowledged speech rights should not be regulated unless there is an extraordinary need. *Denver Area Educational Telecommunications Consortium, Inc. v. FCC,* 518 U.S. 727, 739 (1996). This Court reviewed the existences of speech interests for telecommunications companies and to what extent they need to be applied. The Court stated that a law that restricted access to leased channels and required operators to segregate "patently offensive" programming on a single channel, to block that channel from viewer access could be a valid restriction. *Id.* However, the Court was clear that the telecommunications companies still had rights to maintain editorial control. *Id.* The Court stated the essence of that protection is that Congress may not regulate speech except in cases of extraordinary need and with the exercise of a degree of care that we have not elsewhere required. *Id.* The Court found that there was a valid cause for a restriction here since the purpose was to "protect children from 'patently offensive' sexual material" however, they were reluctant to deny all speech rights. *Id.*

Even if this Court finds that there are factors that make Poster quantitively similar to a common carrier, the similarities between a broadcaster's editorial judgement and Poster's should not be ignored. Like the above-mentioned case, Poster as always maintained editorial control over the publications. This control was made aware to every user on the platform when creating an account in its User Agreement. This agreement that is available to all users for view. Poster has always maintained the right to remove content that violates its organizational values. Poster has allowed its users to self-promote and has allowed a lax utilization of its editorial authority to promote artistic freedom, but this does not mean that Poster's loses its rights to exercise editorial discretion.

As the Fifteenth Circuit stated, the District Court completely disregarded the fact that even common carries have First Amendment rights.[33] Poster has never functioned as only an "expressive conduit for others' artistic speech." Poster has always aligned with the APC and APC-associated organizations. The users were not unfamiliar with this since Poster has not been shy about its views. Poster has always maintained the standard that their discretion is in connection to their company's beliefs. The CC Law enacted by Delmont is in direct violation of the First Amendment because it is an extraordinary measure that does not mean this Court's standard. The CC Law undeniably prohibits the Poster's own speech by limiting its ability to editorialize its users' content. It further requires Poster to endorse messages that do not align with the company's core beliefs. Since its creation Poster has taken in values seriously. It has promoted the APC and APC messaging on this platform. Both artists and art lovers have been subjected to the standard to which Poster holds. For this reason, Poster has never functioned as only a common carrier. It would be improper for the Court to analyze Poster in that way.

For these reasons, we ask this Honorable Court to find that the CC Law is unconstitutional and deny Petitioner's request to overturn the Fifteenth Circuit's First Amendment ruling.

[33] See *Poster v. Wallace*, C.A. No. 21-CV-7855, at 12 (Sept. 1, 2021).

2. Delmont's Common Carrier Law, As Enacted, Violates the Free Exercise Clause of the First Amendment by Preventing Poster From Donating a Percentage of its Profits to Religious Causes, As it is Neither Neutral nor Generally Applicable.

The First Amendment of the United States provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'[34] Originally only applied to actions by the federal government, the Court in *Cantwell v. Connecticut* held that the First Amendment, including the Free Exercise Clause, applied to actions by state governments, through incorporation as required by the Fourteenth Amendment.[35]

While much First Amendment litigation involves an individual's right to freedom of exercise, recent Supreme Court cases such as *Burwell v. Hobby Lobby Stores, Inc.* have held that closely held corporations may have some religious rights under the Religious Freedom and Restoration Act.[36]

Even though the Court declined to extend the same rights to corporations under the First Amendment Free Exercise Clause in *Burwell,* much of the same logic could be used to do so if that question was granted certiorari.[37] Because the question that was granted certiorari was narrowly asking about whether or not the law was unconstitutional due to neutrality and general applicability and not corporate religious rights in general, I will assume that as a corporation Poster possesses such rights, and that they have been violated because Delmont's CC law is neither neutral nor generally applicable.

[34] U.S. Const. amend. XIV, § 2.).
[35] *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, (1940).
[36] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 736, (2014).
[37] *Id.*

a. Free Exercise Rights Generally, The Smith Test

The First Amendment Free Exercise clause not only covers beliefs, but conduct. However, there are often instances in which the government may have a legitimate interest in regulating the conduct of its citizens, for health, economic, or quality of life reasons, and these regulations have may have an incidental effect on the Free Exercise of religion.

If this were not the case, it would "permit every citizen to become a law unto himself."[38] The landmark case in Free Exercise, Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, set the current standard that any laws passed by state governments that incidentally burden the free exercise of religion must be both *neutral and generally applicable*.[39]

In that case, the City of Hialeah, Florida, received numerous complaints of 'Santeria' religious practices occurring. These religious practices included animal sacrifice as a basic tenet of their religion.[40] After numerous constituent complaints that a new Santeria church was set to open in their city, the city council of Hialeah convened an emergency meeting, passing a resolution noting the publics 'concern' expressed by residents of the city that 'certain religions may propose to engage in practices which are inconsistent with public morals, peace, or safety.'[41] After further consultation with the City Attorney, Hialeah then elected to pass an ordinance that prohibited the 'unnecessary killing, tormenting, torture, or mutilation of an animal in a public or private ritual or ceremony not for the purpose of food consumption.'[42] The law was riddled with exceptions, such as exceptions for slaughterhouses, 'licensed establishments,' and

[38] *Reynolds v. United States,* 98 U.S. 145, 167, 25 L. Ed. 244 (1878).
[39] *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 531, (1993).
[40] *Id.* At 524.
[41] *Id.*
[42] *Id.* At 527.

animals who 'were raised specifically for food purposes.'[43] Because the law specifically targeted the religious conduct and practice of Santeria, it was not neutral. Because the law was littered with exceptions for killing animals in basically any way *except* religious animal sacrifice, the law was not of general applicability. Thus, the law was unconstitutional under the First Amendment and was overturned.

A good example of a law that is both neutral and generally applicable was demonstrated in the case *Emp. Div., Dep't of Hum. Res. of State of Or. v. Smith.* This case came as a result of Oregon's Department of Human Resources having the policy that any employees discharged from their job for workplace misconduct would be disqualified from receiving unemployment benefits.[44] Drug treatment counselors, Alfred Smith and Galen Black, used a small amount of Peyote in a ritual at their church, the Native American Church, and were fired from their jobs at the drug counseling center.[45]

Both Smith and Black applied for unemployment, and were denied unemployment compensation because they were fired for their job for 'work-related misconduct.'[46] In their case, the 'work-related misconduct' was that they had violated Oregon's state law that banned the consumption of psychedelic Peyote cactus.[47] Oregon's law was considered 'neutral' because it did not target any one particular religion, but rather, drug use. The law was 'generally applicable' because there weren't a number of exceptions to the prohibition of the drug- it was outright illegal for everyone all of the time. For these reasons, the court held that the Oregon statute was

[43] *Id.*
[44] 485 U.S. 660, 663, (1988).
[45] *Id.*
[46] *Id.* At 672.
[47] *Id.* At 667.

lawful, and because of this so was Oregon's unemployment division denying Smith compensation.

While there have been a number of developments in the field of 1st Amendment litigation, the test used in *Smith* and *Lukumi* is still the same; a law that incidentally effects the free exercise of religion must be neutral and generally applicable, most recently affirmed in *Fulton v. City of Philadelphia.* 141 S. Ct. 1868, 1871, (2021).

b. **Delmont's CC Law Is Not Neutral**

The Court Ruled in *Lukumi* that facial neutrality, on its own, is not determinative to show that a law is neutral.[48] What this means is that states, counties, and municipal governments cannot claim that a law incidentally inhibiting free exercise is neutral just because the law does not discriminate on its face.[49] In the case of Lukumi, the City of Hialeah specifically targeted the Santeria religion, even if the law did not use the word *Santeria.* This was shown by looking at the legislative history, particularly the prior resolution essentially condemning Santeria.[50]

In *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n,* The Court said that the Colorado Civil Rights Commission did not act neutrally when applying Colorado's Civil Rights law.[51] Part of this determination was based on comments made by the commissioners about the owner of Masterpiece Cakeshop's religion. The court noted that the commissioners "endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain."[52]

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[48] *Lukumi* At 534.
[49] *Id.*
[50] *Id.* At 526.
[51] *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n,* 138 S. Ct. 1719, 1729, (2018).
[52] *Id.*

Like the Santeria religion in *Lukumi,* and the religious convictions of the purveyor of Masterpiece Cakeshop, Poster and its associated American Peace Church have been targeted, with precision, with the State of Delmont's common carrier law. Delmont's common carrier law mandates that platforms with a 'significant market share' "must serve all who seek to maintain an account, regardless of political or religious viewpoint," even when those views clearly contradict the religious view of the platform.[53] Poster, notably, is a "platform" company with about 77% of the self-publishing market.[54] Thus, like the Plaintiffs in *Lukumi,* the American Peace Church is the only religious organization that the law essentially applies to.

The provision of the Delmont law that states that these platforms must "refrain from using corporate funds to contribute to political, religious, or philanthropic causes" was also laser targeted at Poster and the American Peace Church.[55] Not only is Poster the only platform with such a significant market share, one of the American Peace Church's core tenets is philanthropic efforts to improve literacy in poor areas, a mission they are no longer able to serve after Delmont's Common Carrier law.[56] If the purpose of the CC law was to provide a free and fair public forum for speech, and not as a means to suppress the American Peace Church, suppressing efforts at literacy and education in poor communities would be a poor way to achieve such a goal.

Finally, like the city council in *Lukumi,* the Attorney General of Delmont, William Wallace, made a comment about the American Peace Church and Poster that seemed to arrive out of prejudice. "The APC-founded Poster platform is discriminating against Delmont citizens

[53] Seigenthaler at 30.
[54] *Id.* At 20.
[55] *Id.* At 14.
[56] *Id.* At 3.

based on their political viewpoints."[57] Again, if the law was intended to provide a robust public forum, there would be no utility in mentioning Poster's religion.

c. Delmont's CC Law is Not Generally Applicable

While we posit that this law constitutionally fails as it was not neutral in its creation, we also submit that it is unconstitutional because it is not generally applicable. *Fulton v. City of* Philadelphia is instructive here. "A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way.[58]

The Court in *Fulton* also pointed out that individualized exemptions make a law not generally applicable. "A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by creating a mechanism for individualized exemptions."[59]

In the case of Delmont's CC law, the prohibition on social, philanthropic, and political donations by common carrier platforms with a significant market share is essentially a prohibition on religious conduct that is normally permitted in a secular context. The State of Delmont has no other laws prohibiting donations to these various causes, only the CC law that is narrowly targeted at the American Peace Church and their literacy and poverty fighting initiatives.

While the state of Delmont and Governor Trapp provide the explanation that the provision was to 'avoid implicating the Establishment Clause,' this claim falls flat on its face.

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[57] *Id.* At 7.
[58] *Fulton* at 1877.
[59] *Id.* At 1871.

Establishment Clause violations require that there be "excessive entanglement between government and religion."[60] Poster, while affiliated with the APC, is a private organization with no affiliation with the United States government, beyond being a party to this lawsuit. There is no reason to believe allowing Poster to donate a percentage of its profits to APC poverty and literacy efforts would create any entanglement between government and religion, let alone an excessive one.

Further, the State of Delmont *has* created an invitation for the government to allow for individualized exemptions. Poster, in following its own Terms and Conditions, elected to suspend the account of a user and denied the publication of work that violated their terms and conditions once before.[61] This instance never drew an enforcement action, as did the instance of Katherine Thornberry's deleted post, thus inviting individualized exceptions. Because of the uneven enforcement, the law's non-applicability to any company not associated with the APC, and the unfounded explanation for the no-contribution provision, the Delmont CC law is not generally applicable and is thus unconstitutional.

Conclusion

The Delmont Law is unconstitutional because it is neither neutral, nor generally applicable. It is not neutral because Poster and the APC were laser-targeted in the creation of the law, being the only platform with a 'significant market share,' their religion being called out by the Attorney General, and their status as the only known platform publisher affiliated with a religion with a significant dedication to philanthropic causes.

[60] *Lemon v. Kurtzman*, 403 U.S. 602, 614, (1971).
[61] *Seigenthaler* At 6.

The Delmont law is also unconstitutional because it is not generally applicable. This is demonstrated through its uneven enforcement, unfounded explanations for the non-contribution provision, and non-applicability to any organization not associated with the APC.

CONCLUSION

The Fifteenth Circuit properly concluded that, Poster was entitled to First Amendment protections because Delmont's CC Law improperly limit's Poster's editorial discretion. The Fifteenth Circuit also properly concluded that Delmont's CC Law violated the Free Exercise Clause of the First Amendment by being neither neutral nor generally applicable.

We ask that this Court deny Petitioner's request to overturn the Fifteenth Circuit's ruling.

/s/ Team 18

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CERTIFICATION

This brief's content was solely the product of the work of the members of Team 18. We have fully complied with the school's honor code. We acknowledge that we have complied with all rules of the competition.