No. 23-CV-1981

IN THE SUPREME COURT OF THE UNITED STATES

COOPER NICHOLAS,

Petitioner,

v.

STATE OF DELMONT and DELMONT UNIVERSITY,

Respondents.

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

BRIEF FOR PETITIONER

Team 13
Attorneys for Petitioner

QUESTIONS PRESENTED

1. Is it constitutional under the First Amendment for Respondents to mandate that Dr. Nicholas conform his scientific research and subsequent conclusions to what the academic community deems is a consensus view of what is "scientific"?

2. Do Respondents violate the Establishment Clause when it provides a facially neutral, state-funded research study, yet terminates Dr. Nicholas from his position as the study's principal investigator because he suggests the study's scientific data may parallel ancient religious symbolism?

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The opinion of the United States Court of Appeals for the Fifteenth Circuit is unreported and provided in the Decision on Appeal. See Record ("R.") at 32-51. The opinion of the United States District Court for the District of Delmont, Mountainside Division is unreported and set out in the Decision on Appeal. R. at 1-32.

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 District of Delmont Mountainside Division 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. 552, 558 (1988).

CONSTITUTIONAL PROVISIONS INVOLVED

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

STATEMENT OF CASE

I. Statement of Facts

Cooper Nicholas, Ph.D., ("hereinafter, "Dr. Nicholas") is a widely published observational astrophysicist. R. at 3. Dr. Nicholas is a graduate of the state-run Delmont University (hereinafter the "University") with joint degrees in astronomy and physics. *Id.* He is the scholar in residence at the Ptolemy Foundation, an independent research institution located in Nevada. *Id.* Dr. Nicholas took a leave of absence from his residence program to pursue the University's Visitorship. R. at 5-6.

The University's Visitorship was established to observe the Pixelian Comet in the Northern Hemisphere. R. at 5. In the fall of 2020, after years of fundraising efforts from local, state, and federal sources, the University opened the GeoPlanus Observatory (hereinafter, the "Observatory") atop Mount Delmont. R. at 4. The Visitorship position provides for the visiting scholar, as the Astrophysics Grant's "principal investigator," to utilize the Observatory facilities and equipment to study the Pixelian Event. R. at 5. The Astrophysics Grant requires that the study of the event and the "derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study." *Id.*

Dr. Nicholas was awarded the Astrophysics Grant. *Id.* For the first nine months of his Visitorship, Dr. Nicholas led the Observatory's efforts to develop and conduct a variety of widely accepted parameters for measuring the celestial environment preceding the Pixelian Event. R. at 6. Under special arrangement with the premiere peer-reviewed journal in the field, *Ad Astra*, he published a series of cosmic measurements. *Id.* Dr. Nicholas's article concluded that peculiar wavelength changes in the spectral array signaled something momentous was occurring in the galaxy prior to the Pixelian Event. *Id*. Given the Observatory's unique geographical situation, its state-of-the-art telescope, and its ready access to remote astrophysical sensing equipment, Dr.

Nicholas sought to take advantage of the appearance of the Pixelian Comet in the Northern Hemisphere, which occurs once every ninety-seven years. Over the course of a three-week period in Spring 2023, the Pixelian Event occurred in the Northern Hemisphere. *Id.* At the GeoPlanus Observatory, Dr. Nicholas and his team continued their planned observations and collected their data. *Id.*

Six months later, Dr. Nicholas sought, once more, to publish his observations and interim conclusions in *Ad Astra*. *Id.* He also added a historical dimension, noting that the atmospheric phenomena and electro-magnetic disturbances in the cosmic environment that he observed before, during, and immediately after the comet's appearance were consistent with the kinds of cosmic changes remarked upon for centuries in various cultures, including those related to the Meso-American indigenous tribes in their ancient religious history. R. at 6-7.

In the article, Dr. Nicholas surmised that the Meso-American hieroglyphs found on cave walls and rock facings may have been primitive depictions of the same celestial array that had just occurred in the Northern Hemisphere. R. at 7. He further speculated that it would be useful to explore the accepted date for the glyph drawings with the appearance of the Pixelian comet in ancient times. *Id.* Based on his scientific observations, he surmised that the glyphs appeared to memorialize the kind of electrical interplay within the universe that the indigenous people knew as the "lifeforce." *Id.* These suppositions, he predicted, would be further substantiated by his upcoming post-Pixelian Event studies of the celestial environment. *Id.* Finally, he suggested that the occurrence demonstrated an interaction among electrical currents, filaments, atmospheres, and formations of matter that appeared consistent with the "Charged Universe Theory." *Id.*

Though it may be controversial, Dr. Ashmore and her colleagues admitted they could not disprove Dr. Nicholas's findings. R. at 7. Despite their concerns, they still published his findings

in *Ad Astra*. *Id.* Dr. Nicholas focused on studying the Pixelian Event from a scientific perspective and was open to whatever findings were the result. *Id*. Dr. Nicholas certainly had not applied to any Meso-Paganistic seminary at the time of his studies. Nicholas Aff. ¶ 16.

Although some American academics expressed concern regarding Dr. Nicholas's findings, many Australian and European astrophysicists believed Dr. Nicholas was on course for revolutionary findings dependent upon further study of the Pixelian Event. R. at 9. The University President, Meriam Seawall, sent Dr. Nicholas a letter expressing the University's concern for its own reputation. *Id.* The University, without mention of the support Dr. Nicholas had received from European and Australian astrophysicists, declared that Dr. Nicholas must promise to limit his research to the academic community's "consensus view" of a scientific study. R. at 9-10. Dr. Nicholas responded that he would not be told what to conclude or upon what his observations might rest. R. at 10. He added that he knew for a fact that the University had not stopped other scientists on the Delmont faculty from referencing or relying upon the writings of other pagans, such as the Greeks, Romans, Incas, and Phoenicians. Nicholas Aff. ¶ 16.

President Seawall replied that Dr. Nicholas was free to research and publish on this subject, but not under the auspices of this grant-funded research. *Id*. The State had been clear from the start that it was subsidizing only what it deemed to be science-based conclusions about the Pixelian Event that comport with the protocols exercised by academic consensus. R. at 10-11. Dr. Nicholas replied that there was nothing unscientific in what he was concluding. R. at 11. His thesis and conclusions would evolve through his research, the findings of which may parallel ancient lineage. *Id*. To stop his research now at a time just prior to his post-Event data analysis would compromise his entire project and risk the loss of the data forever. *Id*.

President Seawall, on behalf of all parties who funded and administered the Astrophysics Grant, gave Dr. Nicholas a date to restate his agreement to limit his study and conclusions to the academic community's consensus view of scientific study. *Id*. Upon receipt, Nicholas immediately emailed a reply stating that his study and conclusions were scientific and that the school should recognize them as such. *Id*. The next day, the Observatory changed the security protocol so that Dr. Nicholas was denied admittance. *Id*. President Seawall in conjunction with the Observatory made a joint public statement that this measure was taken because of a fundamental disagreement with Dr. Nicholas over the meaning of science itself, and that they could not countenance the confusion of science and religion. *Id.*

II. Procedural History

Dr. Nicholas brought suit against the State of Delmont and the University, seeking injunctive relief. R. at 12. Dr. Nicholas argued Respondent placed an unconstitutional condition on his speech. *Id.* Respondents answered that the language of the Astrophysics Grant did not violate Dr. Nicholas's First Amendment free speech rights, and that continuing to support Dr. Nicholas's work would be a violation of the First Amendment's Establishment Clause.[1] *Id.* The parties filed cross-motions for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, on the basis that there was no dispute of material fact. *Id.*

The District Court for the District of Delmont granted Dr. Nicholas's motion for summary judgment and granted his requested injunction. R. at 30. Respondents appealed to the United States Circuit Court of Appeals for the Fifteenth Circuit, which reversed the judgment of the lower court and granted summary judgment to Respondents. R. at 34. Dr. Nicholas petitioned for a Writ of

[1] Respondents voluntarily waived any sovereign immunity claim they may have been entitled to assert in this action. R. at 12.

Certiorari to this Court. R. at 59. This Court granted the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifteenth Circuit. R. at 60.

SUMMARY OF THE ARGUMENT

This case presents a constitutional challenge to a funding condition imposed by the State of Delmont and Delmont University (collectively, "Respondents") on Dr. Nicholas's research. The condition, as implemented by the Respondents, requires Dr. Nicholas to adopt and accept the academy's consensus regarding the definition of what qualifies as "scientific", and prohibits him from expressing any view the academy deems "inconsistent" with the condition.

Dr. Nicholas challenges this condition as a violation of his First Amendment right to free speech. The Court of Appeals' interlocutory decision is incorrect because it forces Dr. Nicholas to adopt and espouse as his own, the University's viewpoint as to what is "scientific," and the condition imposed is not narrowly tailored as it is both overinclusive and underinclusive. The condition is overinclusive in that it prohibits any view that does not comport with the University's consensus as to what is "scientific." It is underinclusive in that the University did not impose this same condition on other scientists on the Delmont faculty when referencing and relying upon the writings of other pagans, such as the Greeks, Romans, Incas, and Phoenicians. This inconsistency demonstrates that the University did not truly believe that Dr. Nicholas's findings would further the public's confusion between science and religion. The University might disagree with Dr. Nicholas's judgment – as it often does when it confronts dissent, but it may not force him to comply with their view.

Additionally Dr. Nicholas is entitled to a reversal of the Fifteenth Circuit's judgment because the court erred in holding that permitting Dr. Nicholas's speech violated the Establishment Clause. The Fifteenth Circuit further erred in relying on *Locke v. Davey*. Respondents cannot

invoke the Establishment Clause to selectively exclude Dr. Nicholas from a facially neutral and available benefit because of his religious beliefs. The University is not engaged in funding vocational religious instruction so that anti-Establishment concerns are implicated. Respondents' argument that its anti-Establishment interest is compelling must fail because it is not a compelling basis for specially disfavoring Dr. Nicholas's religious beliefs.

ARGUMENT

I. THE FIFTEENTH CIRCUIT IMPROPERLY HELD THAT RESPONDENTS DID NOT INFRINGE UPON DR. NICHOLAS'S CONSTITUTIONAL RIGHT TO FREE SPEECH.

The condition to conform to what the Respondents deem "scientific" is unconstitutional because it mandates that the recipient of this grant, Dr. Nicholas, adopt and express the Respondents view and prohibits him from engaging in any speech that Respondents deem "inconsistent" with its orthodoxy. The First Amendment's "free speech clause," applicable to the States through the Fourteenth Amendment, *Gitlow v. New York*, 268 U.S. 652, 666 (1925); provides that "the Free Speech Clause restricts government regulation of private speech. . ." *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009).

"It is a basic First Amendment principle that freedom of speech prohibits the government from telling people what they must say. At the heart of the First Amendment lies the principle that each person should decide for himself [] the ideas and beliefs deserving of expression, consideration, and adherence." *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013). Under the unconstitutional conditions doctrine "the government may not place a condition on the receipt of a benefit or subsidy that infringes upon the recipient's constitutionally protected rights, even if the government has no obligation to offer the benefit in the first instance." *Id.* at 212.

"If there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion[.]" *West Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 642 (1943). The academy has traditionally been the launching pad for challenges to government orthodoxy, which is why the courts have routinely subjected infringements on speech and expressive association to especially heightened scrutiny in the context. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835-36 (1995); *Rust v. Sullivan*, 500 U.S. 173, 200 (1991). Because the Respondents are seeking to restrict Dr. Nicholas's speech, the condition must pass the strict scrutiny standard: it must be (1) narrowly tailored to (2) further a substantial governmental interest. *R.A.V. v. City of St. Paul,* 505 U.S. 377, 395 (1992).

This Court has found affirmative compulsion of speech to be more troubling than an affirmative compulsion of silence, which itself can violate the First Amendment. *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) (finding that "[c]ompelling [an] affirmative act . . .involved a more serious infringement upon personal liberties than compelling a "passive act."). This condition prescribes what Dr. Nicholas must say and profess to believe to receive the Astrophysics Grant and employment.

The Respondents restrict Dr. Nicholas's speech by prohibiting him from deciding what is "scientific," thus not allowing him to choose what is deserving of expression. It deprives Dr. Nicholas the freedom to draw a conclusion based on his own research, observations, and judgment of this event and how to express such conclusions. To rationalize this, the University asserts that it does not wish to add to the public's confusion of science and religion, yet it admits that it is unable to support that assertion. R. at 16-17.

Leveraging federal funds to compel specific speech creates a chilling effect that discourages individuals and organizations from freely expressing their religious beliefs and viewpoints. This undermines the robust exchange of ideas and perspectives that is essential to a vibrant and pluralistic society. It also sends a troubling message that certain religious viewpoints are disfavored or unwelcome in the public sphere, which is antithetical to the principles of religious freedom and tolerance upon which the First Amendment was enacted.

The Fifteenth Circuit incorrectly concluded that the Respondents' theory was a substantial governmental interest which runs afoul of this Court's precedents. In essence, the court overlooked this Court's holding that the government "may not deny [the] benefit to [plaintiff] on a basis that infringes his constitutionally protected freedom of speech . . ." *Agency for Int'l Dev.*, 570 U.S. at 214 (citing *Rumsfeld v. F. for Acad. & Inst. Rts.*, 547 U.S. 47, 59 (2006)). The Respondents' conditions on the Grant run afoul of that holding. For the foregoing reasons, this Court should reverse the Fifteenth Circuit's decision and hold that the University imposed an unconstitutional condition and engaged in viewpoint discrimination as they do not have a substantial government interest.

A. Respondents impose an unconstitutional condition by requiring Dr. Nicholas to adopt and accept their consensus as to what is "scientific," thus partaking in viewpoint discrimination.

Respondents impose an unconstitutional condition by requiring Dr. Nicholas to adopt and accept their consensus as to what is "scientific," thus partaking in viewpoint discrimination. "The constitutional right of free expression is . . . intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us . . ." *Id.* To regulate speech, the State must demonstrate that there is an "actual problem" in need of solving and that the restriction on speech is necessary to the solution. *United*

States v. Playboy Entertainment Group, 529 U.S. 803, 822-823 (2000). In turn, viewpoint discrimination exists "when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) ("a restriction is viewpoint based if it regulates speech because of disagreement with the message it conveys.").

In *Rosenberger v. Rector & Visitors of University of Virginia*, this Court held that a university engaged in viewpoint discrimination prohibited by the First Amendment when it denied funding to a student publication because of its religious editorial viewpoint, not the religion itself. 515 U.S. at 828. The petitioners in that case, the student journal, sought "to publish a magazine of philosophical and religious expression." 515 U.S. at 826. The petitioners requested disbursement for payment to a private contractor for printing costs, an enterprise supported by the student activity fund. *Id*. The university denied the funding. *Id.*

Here, the University asserts that the negative press received by Dr. Nicholas's findings in *Ad Astra* warrants censorship because it adds to the public's confusion of science and religion. R. at 15-16. Yet, this type of restraint on public discussion is exactly what this Court thwarted in *Rosenberger*. As the university in *Rosenberger* discriminated against the petitioners' religious editorial viewpoint, so too do Respondents discriminate against Dr. Nicholas's religious viewpoint on the academic's consensus of "scientific." 515 U.S. at 828; *see also* R. at 11. The University presents no evidence and even admits that it could not countenance the confusion of science and religion, thus rendering its interest in silencing Dr. Nicholas moot. Respondents assert that because they are funding Dr. Nicholas's research, that it may compel his speech to conform to the academic's consensus as to what is "scientific." R. at 11. But the university also funded the

petitioners in *Rosenberger*, and this Court still held that denying that funding due to a religious viewpoint was unconstitutional. 515 U.S. at 828.

Further, the University in turn compels speech by requiring Dr. Nicholas to accept and adopt the University's consensus as to what is "scientific." This action constitutes viewpoint discrimination because Respondents' requirement stems from their disagreement with Dr. Nicholas's research experiments and conclusions. Not only does this condition compel speech and constitutes viewpoint discrimination it is both overinclusive and underinclusive. The condition is overinclusive in that it prohibits any view that does not comport with the University's consensus as to what is "scientific." It is underinclusive in that the University did not impose this same condition on other scientists on the Delmont faculty when referencing and relying upon the writings of other "pagans, such as the Greeks, Romans, Incas, and Phoenicians." R. at 10. Respondents fear those findings will further the public's confusion between science and religion, but this contention is frustrated by Respondents' not imposing a similar condition on other scientists on the Delmont faculty. R. at 10. By demanding that Dr. Nicholas conform to their consensus on what qualifies as "scientific," Respondents are imposing an unconstitutional condition and engaging in viewpoint discrimination that is both overinclusive and underinclusive.

B. Respondents engage in government compelled speech by requiring Dr. Nicholas to change his findings to accept their view as to what is "scientific" and penalizes Dr. Nicholas's refusal by leveraging his employment and benefits.

Respondents' denial of the government benefit of the Astrophysics Grant due to Dr. Nicholas's allegedly heterodox scientific beliefs amounts to a penalty on Dr. Nicholas's speech. "[T]he relevant distinction is between conditions that define the limits of the government spending program – those that specify the activities Congress wants to subsidize – and conditions that seek

to leverage funding to regulate speech outside the contours of the program itself." *Agency*, 570 U.S. at 214.

The First Amendment prohibits the government from compelling individuals to surrender their constitutional rights as a condition for receiving a government benefit, particularly when the benefit is unrelated to the requirement. *Id.* at 213. In *Speiser v. Randall*, appellant was denied a tax exemption provided for veterans for refusing to sign a loyalty oath. 357 U.S. 513, 515 (1958). The loyalty oath mandated signatories to declare that they were not members of organizations advocating the overthrow of the government by force, and that they did not advocate such overthrow themselves. *Id*. This Court held that "to deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. *Id.* at 518. Further, this Court found that the appellees were mistaken in that "just because a tax exemption is a 'privilege' or 'bounty,' its denial may not infringe speech." *Id.*

Because this Court found in *Speiser* that mandating loyalty oaths for a tax exemption was in effect a penalty, this Court should also find that Respondents penalized Dr. Nicholas. Respondents leveraged Dr. Nicholas's funding, which includes: his salary, use of the facilities and equipment, research assistant support, incidental costs associated with the scientific study, and publication costs, and is in fact a penalty. R. at 5.

Denying these benefits is parallel to denying a teacher the right to express their teachings and findings. This kind of governmental influence of speech in an academic setting cannot be allowed as it prohibits an airing of opposing views. The First Amendment prohibits this type of governmental influence on speech. This Court should hold that the Respondents engage in government compelled speech in requiring Dr. Nicholas to change his findings to accept their view as to what is "scientific" and penalizes Dr. Nicholas's refusal by leveraging his salary and benefits.

C. Respondents' condition to adopt and accept their view as to what is "scientific" amounts to coercion because it forces Dr. Nicholas to publish conclusions at odds with his own research and compels contradictory statements.

Respondents in implementing a condition to accept and adopt their view as to what is "scientific" results in a compelled contradiction if Dr. Nicholas were to publish his beliefs elsewhere. This Court has made clear that, a predicate for any unconstitutional conditions claim is that if the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure the person into doing, then it violates the First Amendment. *See Speiser*, 357 U.S. at 526 ("[w]here the government is prohibited from infringing on protected speech through direct regulation, it may not achieve the same result indirectly by imposing a condition on government benefits.").

Cases involving unconstitutional conditions occur when the Government imposes a condition on subsidy recipients rather than on a specific program or service, essentially preventing recipients from engaging in protected activities beyond the federally funded program's scope. *Agency*, 570 U.S. at 212. In *Agency for International Development*, the government conditioned federal funding, to combat HIV/AIDS, on the requirement that the recipient adopt a policy explicitly opposing prostitution. *Id.* at 208. This Court held that this condition violated the First Amendment because it coerced a recipient to affirm a belief that by its nature could not be confined within the scope of government's goal. *Id.* at 219.

"This case is not about the Government's ability to enlist the assistance of those with whom it already agrees. It is about compelling a grant recipient to adopt a particular belief as a condition [for] funding." *Id.* at 218. Such a requirement violated the First Amendment, as it compelled recipients to express a belief that was not directly connected to the program. *Id.* In other words, the

condition imposed on recipients of the federal funding was not directly related to the purpose or mission of the government funding.

This Court held that "[a] recipient cannot avow the belief dictated by the Policy requirement when spending [] funds, and then turn around and assert a contrary belief or claim neutrality, when participating in activities on its own time and dime. . ." *Id.* at 206. In requiring Dr. Nicholas to express Respondents' belief as to what is "scientific," the funding requirement goes beyond defining the limits of grant, and it contradicts the very policy behind the funding of this grant. R. at 1. The point of this grant, at its very core, is to research, study, and draw conclusions of this once in a lifetime Pixelian Event. *Id.* In mandating a conclusion that requires Dr. Nicholas to disavow all of the findings about this Event, throughout history, amounts to compelled conclusions and contradictions. This Court should hold that by forcing Dr. Nicholas to publish conclusions at odds with his own research and compelling contradictory statements on the Charged Universe theory, Respondents engaged in coercion.

D. Respondents created an obstacle to Dr. Nicholas's right to freedom of speech after his receipt of the Visitorship, thus seeking to suppress a dangerous idea as to what is "scientific."

By requiring Dr. Nicholas to conform to their view as to what is "scientific", Respondents seek to suppress a dangerous idea that challenges the mainstream view to the Pixelian Event under the Charged Universe Theory. Where governmental provision of subsidies is not "aimed at the suppression of dangerous ideas, [the government's] power to encourage actions deemed to be in the public interest is necessarily far broader." *Regan v. Taxation with Representation*, 461 U.S. 540, 550 (1983). In *Regan*, a nonprofit corporation applied for a tax-exempt status but was denied as it appeared that a substantial part of its activities consisted of attempting to influence legislation. *Id.* at 549. This Court concluded that Congress was not required to provide public money with which the organization was to lobby with, noting that "although [the] government may not place

obstacles in the path of a [person's] exercise of . . . freedom of [speech], it need not remove those not of its own creation." *Id.*

Here, Respondents' claim that their provision of subsidies is aimed at not furthering the public's confusion of religion and science. R. at 10. Respondents' support their theory not by providing sufficient support for that contention but by using the negative press *Ad Astra* received within the states. R. at 9. However, Respondents overlook the positive feedback this article received from foreign press. *Id.* This challenge as to what is currently known about the Pixelian Event and science, is a dangerous idea that Respondents seek to suppress. In contrast, the defendant in *Regan* sought to use the money to influence the government itself. R. at 7; *see also Regan*, 461 U.S. at 549. The main distinction lies in the purpose of the funds: one aims to influence the government directly, while the other focuses on using the funds for educational and public engagement efforts to challenge prevailing perceptions of what constitutes the Pixelian Event within the Charged Universe Theory. R. at 9. Further, Respondents placed this obstacle of conforming to their idea of "scientific" only after selecting Dr. Nicholas, whose reputation is known as "intuitive" and "wunderkind." R. at 5.

Respondents here seek to suppress his "medieval" scientific standpoint because it challenges the mainstream. R. at 9. This suppression of a dangerous idea is exactly what this Court sought to prevent in *Regan*. *Regan,* 461 U.S. at 549. Because Respondents created an obstacle to Dr. Nicholas's right to freedom of speech after his receipt of the Visitorship, Respondents seek to suppress a dangerous idea as to what is "scientific."

E. Declining Dr. Nicholas the Astrophysics Grant is not a recourse available to the University because the Grant prohibits him from expressing his view on what is "scientific."

Respondents may not deny the Astrophysics Grant to Dr. Nicholas on a basis that infringes his constitutionally protected freedom of speech. While Dr. Nicholas is not entitled to the Astrophysics Grant and "the recourse for a party objecting to a condition on the receipt of federal funds is to decline the funds," this recourse is not a cure to a funding condition that unconstitutionally burdens First Amendment rights. *Agency*, 570 U.S. at 206.

When a law requires universities to grant the same access to campus resources that is provided to others, without compelling them to express any particular message or viewpoint, the law does not infringe on First Amendment rights because it seeks to regulate conduct, not speech. *Rumsfeld v. F. for Acad. & Inst. Rts.*, 547 U.S. 47, 59 (2006). In *Rumsfeld*, the government enacted the "Solomon Amendment" which provided that "if any part of an institution of a higher education denies military recruiters access equal to that provided other recruiters." *Id.* at 52. The University was offered a choice to either (1) allow military recruiters the same access to students, as afforded to other recruiters, or (2) forgo the federal funds. *Id.* at 59. This condition was concluded to be reasonable because the university was offered a choice, this court emphasizing that the "[a]mendment neither limits what law schools may say nor requires them to say anything." *Id.* at 60.

Here, the Astrophysics Grant does not provide a reasonable choice in choosing to decline the funding. Dr. Nicholas is forced to take a stance on a specific view of what is "scientific" after he had already taken an opposite stance on this subject. R. at 11. This differs from what the university in *Rumsfeld* was subject to given that the university was not forced to take a stance on a view with which it fundamentally disagreed. *Rumsfeld*, 547 U.S. at 60. This Court emphasized in

Rumsfeld that the amendment was constitutional because the university was able to decline the funds without their speech being infringed upon. *Id*. Declining the funds here is not an adequate recourse because it does not provide a "reasonable choice" as it requires Dr. Nicholas to have a specific view that conforms and corresponds to Respondents.

F. Dr. Nicholas was not acting as a government speaker and any attempt by the government to suppress or censor his speech based on its religious context constitutes impermissible viewpoint discrimination and violates the principles of free speech and religious freedom.

Dr. Nicholas was not acting as a government speaker and any attempt by Respondents to suppress or censor his speech based on its religious context constitutes impermissible viewpoint discrimination and violates the principles of free speech and religious freedom. "A community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. . ." *Speiser*, 375 U.S. at 519. Government funding cannot be used as a tool to suppress certain types of speech or advocacy, even if the government disagrees with the content or purpose of such activities. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548 (2001). While the government may assert its own ideas without being subject to viewpoint discrimination, the government cannot condition the receipt of federal funds on the waiver of a constitutional right, such as speech and association. *Id*. This is especially true because the grant was not intended to convey a specific message, as Respondents had not yet adopted a view about the Pixelian Event. R. at 9. Instead, the University intended to have Dr. Nicholas conduct a study and conclude his findings. *Id.*

Even when the government provides funding for certain activities, individuals receiving those funds for certain activities do not become government speakers. In *Legal Services Corporation*, the government argued that because it was the primary speaker through the dissemination of legal aid services funded by federal dollars, it had the authority to regulate the

content of the speech funded by those dollars. *Legal Servs.*, 531 U.S. at 541. The attorneys who received the funds and engaged in legal advocacy were not considered government speakers. *Id*. This court reasoned that the program was not designed to promote a governmental message, but rather to facilitate private speech. *Id.* at 548. Further, when an LSC-funded attorney speaks on behalf of their client, the lawyer is not a government speaker. *Id*. This case affirmed that individuals retain their autonomy and constitutional rights to express their own viewpoints, free from government interference or censorship based on the content of their speech. *Id.*

Importantly, it must be noted that Dr. Nicholas, in receiving the grant in this context, is not acting as a government speaker. Rather, he is an independent individual expressing his own conclusions and exercising his constitutionally protected right. R. at 6. It was clear that the publications were those of Dr. Nicholas, as he would share his conclusions in the published scientific peer reviewed article *Ad Astra*, and in the University's press. R. at 5. There is no confusion here. Therefore, this Court should hold that Dr. Nicholas was not acting as a government speaker and any attempt by the government to suppress or censor his speech based on its religious context constitutes impermissible viewpoint discrimination and violates the principles of free speech and religious freedom.

II. DR. NICHOLAS IS ENTITLED TO A REVERSAL OF THE JUDGMENT BECAUSE THE FIFTEENTH CIRCUIT ERRED IN HOLDING THAT PERMITTING DR. NICHOLAS'S SPEECH WOULD VIOLATE THE ESTABLISHMENT CLAUSE, AND IT ERRED IN RELYING ON *LOCKE*.

The Fifteenth Circuit erred in holding that Respondents have a compelling interest in avoiding an Establishment Clause violation. The Establishment Clause of the First Amendment provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" U.S. Const. amend. 1. § 1, cl. 1. This Court, in its Establishment jurisprudence, has cautioned of the difference between establishing a religion and

specially disfavoring religion in an effort to steer clear of Establishment concerns, especially when States choose to provide a neutral public benefit. *Trinity Lutheran*, *Carson*, *Espinoza*, and *Kennedy* all stand for the proposition that in justifying strict scrutiny of special disfavor of religion, States' anti-Establishment concerns cannot serve as the basis for a compelling governmental interest. Yet, this case concerns exactly what this Court has cautioned against.

In providing a neutral benefit, a funding for Dr. Nicholas's academic and scientific research study, Respondents specially disfavored Dr. Nicholas for his religious beliefs. The Fifteenth Circuit erred in holding Respondents have a compelling interest in avoiding an Establishment Clause violation when Respondents terminated its funding of Dr. Nicholas's study. The Fifteenth Circuit further erred in applying *Locke v. Davey*'s holding to this case; the present facts are too dissimilar as compared to the facts of *Locke* for its holding to govern the outcome of this case.

A. The State of Delmont and Delmont University cannot invoke the Establishment Clause to selectively exclude Dr. Nicholas from a facially neutral and available benefit because of his religious beliefs.

The University's argument that it has a compelling anti-Establishment interest must fail. This Court's recent decisions in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, *Carson v. Makin*, *Espinoza v. Mont. Dep't of Revenue*, and *Kennedy v. Bremerton Sch. Dist.*, all confirm the proposition that the Government cannot deny an otherwise publicly available benefit to avoid an Establishment Clause violation. Here, the University seeks to deny funding for Dr. Nicholas's *academic* and *scientific* research on the basis of his personal religious beliefs.

A State cannot deny a facially neutral benefit solely on the basis of a person or entity's religious beliefs. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017). In *Trinity Lutheran*, the Missouri Department of Natural Resources offered state grants to help public and private schools, nonprofit daycare centers, and other nonprofit entities purchase rubber

playground surfaces. *Id.* at 453. The Department had a policy of categorically disqualifying churches and other religious organizations from receiving grants under its playground resurfacing program. *Id.* at 454. Trinity Lutheran Church would have received a grant, *but for* the fact that Trinity Lutheran is a Church. *Id.* (emphasis added). This Court invalidated the Department's policy on the grounds that evaluating an infringement on free exercise, anti-Establishment concerns "cannot qualify as compelling." *Id.* at 466.

This Court reaffirmed this same proposition five years later in *Carson*. *Carson v. Makin*, 142 S. Ct. 1987, 1990 (2022). In *Carson*, Maine enacted a tuition assistance program. *Id.* at 1993. Most private schools were eligible to receive the payments, so long as they were a non-religious institution. *Id.* This Court again invalidated the program, noting that religious discrimination in the anti-Establishment context is no less offensive than in the Free Exercise context. *Id.* at 2001.

Here, in accordance with the terms of the Astrophysics Grant, Dr. Nicholas conducted scientific studies of the Pixelian Event. R. at 5. That his *scientific* observations tended to have historical and religious significance is of no moment; that fact does not change the scientific studies into religious studies. *Id.* Instead, the University denied Dr. Nicholas's funding for his scientific research *because of* his religious beliefs. Like the programs in *Trinity Lutheran* and *Carson*, the Visitorship was a facially neutral policy which specially disfavored Dr. Nicholas because he was a religious person. *Id.* Dr. Nicholas would have continued in his scientific studies *but for* the fact that he was a Meso-Paganist. Other University faculty have referenced or relied upon the writing of other pagans, such as the Greeks, Romans, Incas, and Phoenicians without consequence. Nicholas Aff. ¶ 16. Like Missouri and Maine, Respondents offer nothing more than anti-Establishment concerns for its termination of funding. R. at 11. As this Court recognized in *Trinity Lutheran* and *Carson*, the Establishment Clause does not permit such religious discrimination.

Further, the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs. *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2249 (2020). In *Espinoza*, the Montana Legislature established a program to provide tuition assistance to parents who send their children to private schools. *Id.* at 2251. Montana's no-aid provision of the program *per se* disqualified religious schools from receiving such aid. *Id.* at 2252. This Court once again invalidated the no-aid provision on the grounds that "separating Church and State 'more fiercely' than the Federal Constitution" is not a compelling interest. *Id.* at 2260.

Here, the Establishment Clause is not offended by Dr. Nicholas benefitting from the Respondents' scientific research study. Analogous to *Espinoza*, Respondents established a program to provide funding for a scientific and academic research study. The program disqualified Dr. Nicholas from continuing to receive such funding because of his religious beliefs, even though Dr. Nicholas's focus was on studying the Pixelian Event from a *scientific* perspective. R. at 5 (emphasis added). Because Respondents offer no interest other than avoiding the perception that the University endorses his religious belief system, this interest cannot be compelling. R. at 11.

A proper understanding of the First Amendment's Establishment Clause does not require the government to single out private religious speech for disfavored treatment. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2411 (2022). In *Kennedy*, the petitioner was suspended from his employment as a high school football coach after he knelt at midfield after games to offer a quiet personal prayer. *Id.* at 2412. There was no evidence that the students were coerced to pray with petitioner. *Id.* at 2429. The school district argued its suspension of Kennedy was essential because his Free Exercise rights had to yield to its interest in avoiding an Establishment Clause violation. This Court held Kennedy's employment suspension unconstitutional. *Id.* at 2426. This

Court held that the Establishment Clause must be interpreted by reference to historical practices and understandings. *Id.* at 2411. Under the Clause, Government may not "make a religious observance compulsory." *Id.* (quoting *Zorach* v. *Clauson*, 343 U. S. 306 (1952)). Rather, the Court's traditional understanding is that permitting private speech is not the same as coercing others to participate in it. *Id.* at 2431.

A proper understanding of the Establishment Clause does not require Respondents to specially disfavor Dr. Nicholas's religious speech. Dr. Nicholas's speech was *specially* disfavored; other University faculty have made similar remarks concerning religion without any disfavor. Nicholas Aff. ¶ 16. Like Kennedy, Dr. Nicholas was suspended from the scientific study after he commented on the parallel between his scientific findings and Meso-Paganist recordings of the same phenomenon. R. at 11. As the school district, the University argues its anti-Establishment concerns are paramount to Dr. Nicholas's free exercise of his religious beliefs. This argument must fail as it did in *Kennedy*. The focus of the Establishment Clause at the time of its enactment was to avoid making religious observances compulsory. These facts present nothing of the sort. As in *Kennedy*, there is no conclusive evidence in the record that *any* individual was coerced in *any* way to confirm, validate, or practice Dr. Nicholas's religious beliefs. Permitting Dr. Nicholas's speech is not the same as coercing others to participate in it.

Trinity Lutheran, *Carson*, *Espinoza*, and *Kennedy* are *all* cases in which this Court has invalidated State action because it sought to specially disfavor religion when providing a facially neutral benefit to avoid Establishment implications. However, this Court has held that anti-Establishment concerns do not permit the special disfavor of religion, and that such concerns do not qualify as a compelling interest under strict scrutiny. For the foregoing reasons, the University's assertion that it has a compelling anti-Establishment interest must fail.

B. The Fifteenth Circuit erred in relying on *Locke* as the University is not engaged in funding vocational religious instruction.

Respondents have not engaged in funding vocational religious instruction, nor have Respondents offered a compelling interest in withholding its funding from Dr. Nicholas. *Locke*'s purview is limited to the religious instruction context, which is not at issue here. Therefore, *Locke*'s holding should not apply to the present facts.

Locke does not suggest that discrimination against religion outside the limited context of support for ministerial training would be similarly exempt from exacting review. *Trinity Lutheran*, 582 U.S. at 468 (concurring) (Thomas, J.). In *Locke*, the State of Washington awarded a student a scholarship which was established to assist academically gifted students. *Locke v. Davey*, 540 U.S. 712, 715-17 (2004). Per the terms of the scholarship, he was not allowed to pursue a degree in theology. *Id.* at 716. The student chose to attend Northwest College, a private, Christian college which was an eligible institution under the program. *Id.* at 717. He had "planned for many years to attend a Bible college and to prepare [himself] through that college training for a lifetime of ministry[.]" *Id.* To that end, he decided to pursue a double major in pastoral ministries and business management/administration. *Id.* The student concedes that his religious beliefs were "the *only* reason for him to seek a college degree[.]" *Id*. at 721. This Court ultimately upheld the scholarship's terms on the grounds the State of Washington had a compelling interest in avoiding the use of public funds to support the training of clergy. *Id.* at 722. This Court noted that at the time of the Establishment Clause's enactment, most States placed formal constitutional prohibitions against using tax funds to support the ministry. *Id.* This Court emphasized, though, that the program authorized students to take devotional classes at religious colleges. *Id.* at 724. This Court instead noted the narrow issue in this case was whether the Government had a compelling interesting in training future clergy.

The State of Delmont and the University, in its funding of Dr. Nicholas's *scientific* and *academic* study, would not have been funding a vocational ministry. Like Washington's scholarship program, the University provided funding for scientific study of the Pixelian Event. However, that is where the similarity between the two cases ends. Unlike Davey, Dr. Nicholas had not planned for many years to attend college to prepare himself for a lifetime of ministry. At this time, Dr. Nicholas has not even applied to seminary. Nicholas Aff. ¶ 16. He is only "considering applying" to seminary. *Id.* Unlike the student in *Locke*, Dr. Nicholas's religious beliefs were not the only reason he pursued his college degrees and other academic opportunities such as the Visitorship. He, apart from his religious beliefs, chose to pursue his studies at the state-run Delmont University in astronomy and physics. R. at 3. Rather, Dr. Nicholas is conducting scientific studies which ultimately had some religious significance, which is a far cry from engaging in religious study. R. at 8-9. The record does not conclusively show the University's funding would support Dr. Nicholas becoming a clergy man. Therefore, Delmont and the University do not have a compelling interest in terminating the funding of Dr. Nicholas's scientific research study. Washington's interest in avoiding funding clergy is a concern not present here. At the time of the Establishment Clause's enactment, there was no concern against funding state run universities and academic studies, the results of which may or may not have religious significance. Because the issue presented in *Locke* is not presented here, Respondents reliance on *Locke* must fail. Therefore, *Locke*'s facts are too dissimilar for its holding to dictate the outcome in this case.

CONCLUSION

For the foregoing reasons, Dr. Nicholas is entitled to a reversal of the judgment of the Fifteenth Circuit.

Respectfully Submitted,

/s/ Team 13
Team 13
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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 assemble, and to petition the Government for a redress of grievances.

Team 13 Certification

This is to certify that the work product contained in all copies of Team 13's brief is in fact the work product of the team members and that Team 13 has complied fully with its law school's governing honor code. Team 13 has complied with all of the Competition Rules.

Respectfully Submitted,
Team 13