# In The Supreme Court of the United States

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*No. 23-CV-1981*

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**Cooper Nicholas Ph.D.**
*Petitioner,*

**v.**

**STATE OF DELMONT and DELMONT UNIVERSITY**
*Respondents.*

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

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## BRIEF FOR RESPONDENTS

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*On the brief:*
TEAM 14

Dated: January 31, 2024

Counsel for Respondents

## QUESTIONS PRESENTED

A. Does a state's requirement that a grant recipient conform his research and conclusions to the academy's consensus view of what is scientific impose an unconstitutional condition on speech?

*Answer Below: No.*

B. Does a state-funded research study violate the Establishment Clause when its principal investigator suggests the study's scientific data supports future research into the possible electromagnetic origins of Meso-Pagan religious symbolism and that investigator has also expressed an interest in using the study to support his religious vocation?

*Answer Below: Yes.*

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## OPINIONS BELOW

The opinion of the United States District Court for the District of Delmont, Mountainside Division is unpublished and may be found at *Cooper Nicholas Ph.D., v. State of Delmont and Delmont University,* C.A. No. 23-CV-1981 (D. Delmont Feb. 20, 2024) (hereinafter, "District Court Opinion"). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *State of Delmont and Delmont University v. Cooper Nicholas Ph.D.,* C.A. No. 23-CV-1981 (15th Cir. March 7, 2024).

## STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on March 7, 2024. R. at 51. Petitioner then filed a writ of certiorari, which this Court granted. R. at 60. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## STATEMENT OF THE CASE

The State of Delmont and Delmont University (hereinafter, the "University") created the "Visitorship in Astrophysics" (hereinafter, the "Visitorship") for the purpose of advancing scientific study for the scientific astrophysical phenomenon known as the "Pixelian Event." R. at 1. To fund the Visitorship, the State of Delmont approved an Astrophysics Grant (hereinafter, "Astrophysics Grant" or "Grant."). *Id.* The purpose of the Astrophysics Grant was to fund the resources needed to draw scientific conclusions based on observations and data gathered before, during, and after the Pixelian Event. R. at 2. From the very beginning, the University communicated and made clear that the purpose of the Grant was to fund only science-based conclusions about the Pixelian Event that adhered to the protocols established by the academic consensus. R. at 11.

The Astrophysics Grant provided funds for one "Principal Investigator" to receive "a salary; use of Delmont University's observatory facilities and equipment; funding for research assistants, and incidental costs associated with the scientific study of the Pixelian Events." R. at 1. The Astrophysics Grant also provides funding for the University's Delmont Press to "cover all costs associated with the publication of scientific, peer-reviewed articles related to that event, publications of the final summative monograph on the event, and creation of a public dataset that will include the raw data upon which conclusions were reached." R. at 2. When awarding the Astrophysics Grant, Respondents clearly communicated that the resources provided under the Astrophysics Grant were to be used to render and publish only conclusions aligned with the scientific academy's consensus. R. at 53.

The University received an overwhelming number of applications, and after a rigorous and competitive selection process, Petitioner became the first ever recipient of the Astrophysics Grant. R. at 2, 53. Petitioner holds Bachelor of Science and Master's Degrees in astronomy and physics from Delmont University, and a Ph.D. in astrophysics. R. at 2. Petitioner is widely published on observational astrophysics and authored a leading treatise on the subject. R. at 3. Prior to accepting the Visitorship, Petitioner was the scholar in residence at The Ptolemy Foundation, an independent scientific research institution. R. at 3. Petitioner took a leave of absence from his resident program at The Ptolemy Foundation to pursue the University's Visitorship. R. at 3. Petitioner has a reputation in his field as a "wunderkind" with intuitive observations, even ground-shifting, but at the time that he was selected as a recipient of the Astrophysics Grant, Petitioner's published work focused exclusively in observational astrophysics and did not champion any religious beliefs. R. at 2. In his private life, Petitioner observes the Meso-Paganist faith. R. at 4.

Petitioner began the Visitorship in March of 2022 and led the Observatory's efforts to prepare for the Pixelian Event. R. at 6. Under a special arrangement with the premier peer-reviewed journal in the field, *Ad Astra*, edited by Dr. Elizabeth Ashmore of the Massachusetts Institute of Technology, Petitioner published a series of cosmic measurements. R. at 6.

The Pixelian Event occurred over the course of a three-week period in Spring of 2023 and attracted global attention. R. at 6. The Observatory hosted the largest watch party and garnered substantial media attention. R. at 6.

Six months later, Petitioner sought to publish his observations and interim conclusions in *Ad Astra*. R. at 7. Much to Dr. Ashmore's surprise, Petitioner concluded that the Pixelian Event supported the beliefs foundational to the Meso-Paganist religion. R. at 7. Petitioner also suggested that his findings appeared to be consistent with the "Charged Universe Theory," a highly controversial theory that contends that cosmological phenomena around the universe are dependent upon charged particles rather than gravity. R. at 7. Prior to the publication of the *Ad Astra* article, Dr. Nicholas had not espoused himself to be a proponent of the Charged Universe Theory in public or in private. R. at 8.

Because a reputable and celebrated scientific publication such as *Ad Astra* could not be seen as endorsing a view as extreme as the Charged Universe Theory, Dr. Ashmore agreed to publish Petitioner's article with a prefacing editorial essay stating that Petitioner's interpretation of his observations did not have the endorsement of the *Ad Astra* publication, its editors, or staff. R. at 8. Petitioner states that he is merely "confident" that his findings are consistent with the Charged Universe Theory. R. at 57. Dr. Ashmore was concerned that Petitioner's conclusion did not rest on empirical data or information. R. at 8. Petitioner claims that his sole focus was on studying the Pixelian event from a scientific perspective and that he was open to whatever

findings resulted, regardless of their religious implications. R. at 8. However, Petitioner admits that his pursuits of becoming Sage hinge on his "scholarly" work related to the life force. R. at 8. Therefore, Dr. Nicholas's studies were not focused purely on the scientific findings of the Pixelian Event. Rather, Petitioner wished to advance his personal goal of becoming a First Order Sage in his faith. R. at 57. Petitioner intended to use the results of the study under the Astrophysics Grant to apply to a Meso-Pagan seminary and fulfill his dreams of becoming a Sage. R. at 57.

The University offered Dr. Nicholas the opportunity to restate his agreement to limit his study and conclusions to the academic community's consensus view of scientific study and continue his studies. R. at 11. Dr. Nicholas refused. R. at 11. Because Petitioner refused to adhere to the academic community's consensus view of scientific study, his Visitorship was terminated and related privileges were revoked. R. at 11.

## SUMMARY OF ARGUMENT

The terms and conditions of the state-funded Astrophysics Grant align completely with First Amendment principles. The University did not impose an unconstitutional condition on Petitioner's speech when it required that Petitioner's research and conclusions conform to the academy's consensus view of what is scientific. The University did not discriminate based on viewpoint because the purpose of the condition was to address the issue of the public's confusion between science and religion, an important matter of the public interest which the University is free to support and fund. Nor did the University intend to suppress dangerous ideas when it imposed and enforced the Grant conditions. The University did not want to be perceived as having endorsed Petitioner's belief system or his conclusions conflating science and religion. The Grant conditions imposed by the University also were not coercive because Petitioner was

fully aware of all the conditions of the Grant and agreed to those terms when he accepted the Visitorship. The University placed reasonable requirements and parameters on the Astrophysics Grants. If Petitioner did oppose the Grant conditions because he believed his First Amendment rights would be affected, the appropriate recourse would be for Petitioner to decline the funds. The Astrophysics Grant was not designed to advance Petitioner's private speech. Rather, the Grant advanced the University's speech, that is, government speech, because the University set the terms of the Grant, provided the funding, laboratory facilities, other resources for the research, the conclusions of which were to be published in the University's publication. The University imposed the condition that Petitioner's research and conclusions conform to the academy's consensus of what is scientific for the purpose of addressing the public's confusion of science and religion.

The Establishment Clause would have been implicated if Petitioner was allowed to publish the study with the conclusion endorsing his religious views. The history and traditions surrounding both the founding and subsequent interpretation of the Establishment Clause support this. The key elements in *Locke* are implicated in Petitioner's case, making *Locke* precedential. This is essential, considering the policy concerns in Establishment Clause cases described in *Kennedy*. Further, because of the unique coercive nature of Petitioner's position and the explicit support of his religion's truthfulness, the Clause would be violated even if *Locke* is not considered. The condition does not deny a benefit based on viewpoint because

## ARGUMENT

### I. The Fifteenth Circuit was correct in its holding that the condition imposed by the University on the Petitioner's research was not a violation of the First Amendment's protection over free speech.

The District Court incorrectly concluded that the condition violated the free speech rights afforded to the Petition through the First Amendment. However, for a few reasons, the Petitioner's rights were not violated: First, the Supreme Court has held that the government may selectively fund programs at will. *See Rust v. Sullivan*, 500 U.S. 173 (1991). Second, the condition on funding is not a penalty but rather a legitimate attempt by the University to encourage a specific approach to scientific study. Third, the government's condition on funding cannot be viewed as coercion nor as the suppression of ideas because the restriction was publicized before the Petitioner accepted the grant and allowed the Petitioner the freedom to publish their views that did not conform. Fourth, the appropriate recourse for a party's objection to a funding requirement for federal funds is to decline the funds and that recourse "remains true when the objection is that a condition may affect the recipient's exercise of its First Amendment rights." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 206 (2013). Finally, this condition was not a violation of the Petitioner's First Amendment right because the Petitioner was hired to assert the government's idea and message. The Petitioner was speaking for the University in this instance and was not engaging in private speech.

#### A. The University's condition does not deny any benefit based on viewpoint discrimination because its aim was not to suppress dangerous ideas, but rather the University decided to selectively fund certain programs.

The government cannot deny a benefit based on viewpoint discrimination. The Supreme Court held that "[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interest–especially, his interest in freedom of speech". *Perry v.*

*Sindermann,* 408 U.S. 593, 597 (1972). However, while the government cannot deny a benefit for a constitutionally protected interest, no person has a "right" to governmental benefits. *See id.* Petitioner has no right to the funding nor the opportunity to use the University observatory and the University may deny this right for any reason that does not violate the Constitution. The Supreme Court flat out rejected the idea that "[the] First Amendment rights are somehow not fully realized unless they are subsidized by the State." *Reagan v. Taxation with Representation of Washington,* 461 U.S. 540, 546 (1983) (quoting *Cammarano v. United States*, 358 U.S. 498, 515 (1959)). Petitioner's First Amendment right to discuss the Charged Universe Theory can be completely realized through an alternative publication not subsidized by the government.

The Supreme Court in *Reagan* noted that an internal revenue statute did not violate the First Amendment when it prohibited a nonprofit corporation from lobbying. *Id.* Taxation With Representation of Washington ("TWR") application for tax-exempt status was denied the Internal Review Service ("IRS") because it seemed as though "a substantial part of TWR's activities would consist of attempting to influence legislation." *Id.* at 540. The Supreme Court ultimately held that Congress's rejection of the application did not discriminate because Congress' "aim [was not] the suppression of dangerous ideas." *Id.* at 548.

Further, the Court noted that when a government's aims are not to suppress dangerous ideas its "power to encourage actions deemed to be in the public interest is necessarily far broader." *Id.* at 550 (quoting *Maher v. Roe*, 432 U.S. 464, 476 (1977)). Like TWR, Petitioner's First Amendment right to express his beliefs in the Charged Universe Theory has not been violated by the government because the government's purpose in enaction the funding condition

was not to suppress dangerous ideas but rather was to publish informed scientific research which it deemed was in the public's best interest.

The University's decision to revoke his access was not barred by the Constitution's prohibition on viewpoint discrimination because the university chose to selectively fund programs. The Supreme Court held that "[t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other." *Rust v. Sullivan*, 500 U.S. 173, 193 (1991). Additionally, this action taken by the University should not be reviewed under a strict scrutiny standard as the Supreme Court held that the "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Reagan*, 461 U.S. at 549. Here, the University offered the grant to cover all costs associated with the publications that "aligned with the scientific academy's consensus." R. at 53. As such the government chooses to selectively fund research into this area of study.

The government has been given express permission by the Supreme Court to define the boundaries of its programs. The Supreme Court noted that when "the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes." *Rosenberger v. Rectors and Visitors of University of Virginia,* 515 U.S. 819, 833 (1995). In *Rosenberger*, a case similar to the issue at hand, the University of Virginia was sued by a student

publication organization that published articles with a Christian viewpoint. These students alleged viewpoint discrimination challenging the University's decision to deny funds to the group to pay outside contractors for the cost of publication. Ultimately the Court sided with the students but acknowledged that "when the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Id.* at 833.

The University wants to ensure that its message is not "garbled nor distorted" by theories that do not comport with the scientific academy's consensus. Thus, the University is entitled to take the "legitimate and appropriate steps" such as revoking a visitorship to ensure that their message is not distorted. The Supreme Court noted that "when the government appropriates public funds to establish a program it is entitled to define the limits of that program." *Rust*, 500 U.S. at 194. The President of Delmont University, Miriam Seawall, noted in her affidavit that 2 years ago the University offered a private grant where the recipient offered conclusions that were religious and as a result the University suffered reputational backlash. R. at 53–54. This experience informed the University's decision to limit the program to expressly require the recipient to agree to the scientific academy's consensus.

### B. The purpose of the condition that Petitioner adhere to the terms of the Astrophysics Grant was to address the issue of public confusion between religion and science and was not a penalty.

The government can impose funding requirements and select which activities to fund and support, as long as the requirement are not penalties. *Regan v. Tax'n with Represent'n of Wash.*, *461 U.S. 540, 548 (1983)* (finding that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe on the right.); *Speiser*, 357 U.S. 513, 526 (finding that a

statute conditioning the receipt of tax benefits upon a recipient's oath not to advocate for the overthrow of the United States government constituted an impermissible penalty). The government's decision not to fund an activity, without more, is not a penalty on that activity. *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980). In *Regan*, the Supreme Court considered the constitutionality of a congressional statute which prevented tax-exempt non-profits from engaging in substantial lobbying. *Regan,* 461 U.S. 540. The Court held that Congress had simply chosen not to use public funds to subsidize that non-profit's lobbying efforts, and that its decision alone not to fund their lobbying did not infringe any First Amendment rights. *Id.* Similarly, here Respondents decided that their funds should not contribute to the public's confusion between science and religion.

### C. Government conditions on the grant cannot amount to coercion when the recipient, fully aware of the condition, still decides to accept the grant especially when the condition allows the recipient to freely publish in other publications.

The University's condition on the grant does not amount to coercion because Petitioner knew he would not be allowed to publish research that did not conform with the scientific consensus. The District Court mistakenly conflates two separate issues when it concludes that the University "cannot directly order [Dr. Nicholas] to publish theories limited to the scientific academy's consensus and definition of science." R. at 17.

The District Court's opinion is partially correct, as a few Supreme Court cases hold that the government cannot order or compel someone to speak on topic against their wishes. *See generally 303 Creative v. Elonis,* 600 U.S. 570 (2023) (holding that a Colorado law forcing an individual to speak views that defy her conscience was a violation of her First Amendment

Right); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013) (holding that the requirement to oppose prostitution violated the First Amendment). However, here the University did not directly compel Petitioner to publish theories limited to the scientific consensus, rather the University chose to subsidize a program whose goal was to promulgate a publication based on scientific consensus. Petitioner disregarded the stated goal of the visitorship, a goal that was publicized to all applicants. Here Petitioner is allowed to freely publish any findings with conclusions in any other publication and can change his views or event discredit his own for the university this is common practice in the scientific community as theorist expand their findings.

Though not controlling in this instance, the Second Circuit Court of Appeals further discussed the issue of a government selectively funding a program over the exclusion of another. In the case *Velazquez v. Legal Services Corp.* employees from the Legal Services Corporation ("LSC") brought an action challenging the LSC's restrictions governing use of non-LSC funds. *Velazquez v. Legal Services Corp.*, 164 F.3d 757 (2d Cir. 1999). The court held that the use of LSC funds did improperly discriminate. *See id.* at 773. The Second Circuit discussing the Supreme Court case *Rust v. Sullivan,* 500 U.S. 173 (1991) held that "[the government] could lawfully fund institutions to study the nation's foreign or domestic policies, conditioned on the grantee's not criticizing… the policies of the government." *Velazquez v. Legal Services Corp.*, 164 U.S. at 770. Ultimately the Second Circuit noted that the Court in *Rust* could not have intended its language to "authorize grants funding support for, but barring criticism of, governmental policy." *Id.* The court determined that different speech enjoyed different degrees

of protection and that the strongest protection must be afforded to speech that is critical of the government. *Id.* The Circuit Court continued, noting that "[e]xpression on *public issues* has always rested on the highest rung of the hierarchy of First Amendment values." *Id.* at 771. (quoting *NAACP v. Clairborne Co.*, 458 U.S. 886 (1982)) (internal quotations removed) (emphasis added). In the case at hand, Petitioner's publication should not be considered an expression on a public issue. This Second Circuit case was affirmed by the Supreme court who noted that "certain restrictions may be necessary to define the limits and purposes of the program." *Legal Services Corp. v. Velazquez,* 531 U.S. 533 (2001).

**D. Respondents' decision to revoke Petitioner's funding and other privileges under the Astrophysics Grant was aimed at preserving the University's reputation as an academic institution that adheres to the academy's consensus of what is scientific, and was not an attempt to suppress Petitioner's ideas.**

The government may be selective in its funding and using funding to encourage certain activities which it believes to be in the public interest. *Rust*, 500 U.S. at 193. However, the government may not "discriminate invidiously in its subsidies in such a way as to 'ai[m] at the suppression of dangerous ideas." *Regan*, 461 U.S. at 548. In *Rust v. Sullivan*, the Supreme Court held a regulation which conditions the receipt of a benefit on the relinquishment of a constitutional right did not violate the First Amendment because federal fund recipients remained free to say whatever they wished outside of the federally funded program. *Rust*, 500 U.S. 173 at 183. In the instant case, Petitioner was free to share his conclusions with whatever audience he chose, he simply could not do so under the endorsement of the University publication unless his conclusions remained consistent with what the academic consensus deemed "scientific." Petitioner has the right to speak to his chosen audience on matters of public importance, and the

conditions of the Astrophysics Grant did not inhibit that right or ability. *League of Women Voters,* 468 U.S. at 365. Petitioner was not prevented from speaking to his chosen audience, he merely could not address his audience using the University's publication if his conclusions did not align with what the academic consensus deems scientific.

Respondents did not intend to suppress Petitioner's ideas, nor were Petitioner's ideas actually suppressed. Petitioner remained free to publicly share and disperse his conclusions with the audience of his choosing. In this case, Petitioner did in fact exercise that right. During his studies of the Pixelian Event, Petitioner "posted about" some of his preliminary results and theories, garnering support from multiple Sages who encouraged Petitioner to complete his studies. This shows that Petitioner was free to share and publicize his conclusions. Further, Petitioner presumably has access to the scholarly publications of the Ptolemy Foundation, the independent scientific research institution wherein Petitioner is the scholar in residence. At the very least, with Petitioner's many years in academia and his esteemed reputation in his field give him the knowledge and access necessary to reach his chosen audience, whether science, religious or otherwise.

**E. Declining the grant would have been an appropriate recourse for the Petitioner**

The Supreme Court has specifically held that an appropriate recourse for a party objecting to a funding condition is to decline the fund. *Agency for Int'l Dev., v. Alliance for Open Society Intern.,* 570 U.S. 205, 206 (2013). The Court in *Agency* further elaborated noting that the Spending Clause gives Congress the authority to impose limits on the use of funds to ensure they are used in a way that the government wants. *Id.* Generally if a party disagrees with a

condition that the government imposes on the grant of funds, their recourse is to decline the funds; however, the Court notes that the government conditions can be deemed to be unconstitutional. *Id.*

The Supreme Court notes that the unconstitutionality of a condition depends on what the condition is. *Id.* Conditions that seek to "define the limits of the Government spending program—those that specify the activities Congress wants to subsidize" are generally seen as constitutional. *Id.* While conditions "that seek to leverage funding to regulate speech outside the contours of the federal program itself" may reach too far and abridge some constitutional right. *Id.* The Court illustrated this distinction by discussing its ruling in *Rust.* In *Rust*, the Court noted that Title X of the Public Service Act, which prohibited federal funds from being used in programs where "abortion is a method of family planning" as constitutional. *Id.* (quoting *Rust v. Sullivan*, 500 U.S. 173, 178 (1991). The condition was deemed to be valid because the condition did not prohibit speech "outside the scope of the federally funded program." *Id.*

Here, the University has structured its funding requirement like the requirement discussed in *Rust*: the recipient is free to publish any views they choose in outside publications; the university only requires that the research published under the grant conform to the scientific consensus view. Petitioner, after reading the description of the grant should have either not accepted the position or accepted the position but be on notice that the University may require him to publish his Charged Theory Universe research in a separate publication.

**F. The Astrophysics Grant advanced government speech.**

When the government creates a subsidy for a specific purpose or program, the government may impose certain restrictions to define the limits and purposes of the program. *Legal Services*, 531 U.S. at 543. The government has the authority to express its own ideas and messages and to support and promote those ideas through selective funding. *Bd. of Regents of Univ. of Wisconsin Sys. v. Southworth*, 529 U.S. 217, 229 (2000). This type of selective funding is not proscribed under the First Amendment as viewpoint discrimination. *Id.* In determining the purpose and parameters of the Astrophysics Grant, Respondents simply selected the messages and ideas it wished to promote. In the instant case, Respondents wished to promote conclusions regarding the rare astronomical Pixelian Event and have those conclusions comport with the scientific academy's standards. The University set the terms of the Astrophysics Grant according to its own goals. Additionally, Petitioner used Respondents' observatory, equipment, research transmitting assistants, and the University's publication. Because Respondents set the terms of the Astrophysics Grant according to its own goals and agenda, provided all necessary resources, and intended for the conclusion to be publicized in their publication, Respondents were transmitting their message.

Unlike in *Legal Services*, where the lawyers were speaking on behalf and representing the independent interests of private citizens, here, Petitioner was advancing the interests of Respondents, and those interests were wholly determined by Respondents. Respondents determined that the rare once-every-ninety-seven year astronomical phenomenon known as the Pixelian Event was worthy of scientific study. To that end, Respondents built the observatory funded the Grant, and endorsed the scientific study of the event. This case is unlike that in

*Rosenberger,* where the student organizations first had to obtain status as a Contracted Independent Organization (CIO) before receiving public university funding. 515 U.S. at 823. Here, there was no such distinction between Petitioner and the University. Rather, Petitioner acted more as an agent of the University.

## II. The Fifteenth Circuit was correct that the Establishment Clause is both implicated and would have been violated had Petitioner published his religious endorsement.

The Establishment Clause is the first clause of the First Amendment, and it mandates that "Congress shall make no law *respecting an establishment of religion*[.]" U.S. Const. amend. I, § 1 (emphasis added). Embedded as the keystone of the long-respected American "wall of separation between church and state," the Establishment Clause serves to ensure that the State "should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship . . . ." Letter from Thomas Jefferson to Nehemiah Dodge et al. (Jan. 1, 1802) [hereinafter Jefferson Letter]; National Archives, *Amendments to the Constitution* (last visited Jan. 31, 2024), https://founders.archives.gov/documents/Madison/01-12-02-0224.

The interpretation of the Establishment Clause is based on the history-and-traditions test. *See generally,* e.g., *Locke v. Davey*, 540 U.S. 712, 721–23 (2004) (compiling the lengthy history against the use of public funds to pay for clerical education); *Kennedy v. Bremerton School District*, 597 U.S. 507, 535 (2022) (interpreting the Establishment Clause in "reference to historical practices and understandings[.]").

In *Locke*, the Supreme Court determined that the Establishment Clause was implicated when a college student, similar to Petitioner, was using state funds to pay for his devotional degree and eventual "lifetime of ministry." *Id.* at 717. The funds came through a state-wide, but college-lead, funding program for Washington. *Id.* at 715–16. A student attempted to use his funds to pay for "college training for a lifetime of ministry" when he learned that his private,

Christian university categorized his pastoral ministries degrees as "devotional," and therefore excluded him from the aid program. *Id.* at 717. The student sued, losing in the district court, but winning in the Ninth Circuit, which found that the anti-Establishment interests of the state did not justify excluding devotional degrees. *Id.* at 718.

The Supreme Court reversed, considering the question as to whether a state could deny funding to students preparing for the ministry. *Id.* at 719. Beginning with the first key element that "[t]raining someone to lead a congregation is an essentially religious endeavor" and the principle that "public funds may not be expended for . . . 'instruction that resembles worship and manifests a devotion to religion and religious principles in thought, feeling, belief, and conduct,'" the Court found that a state dealing with ministry education differently than non-ministry education is "not evidence of hostility toward religion." *Id.* at 721 (citations omitted).

Whereas *Locke*'s inclusion of and quotations from Washington state law is non-precedential, both *Locke* and recent Supreme Court opinions' applications of the history-and-traditions test are instructive. *Locke* noted that procuring taxpayer funds to support church leadership was a popular sentiment both in early American voters and in early American political parties, a fact which this Court has accepted throughout the decades. *See, e.g.*, *id.* at 722–23; *Everson v. Board of Ed. Of Ewing*, 330 U.S. 1, 65, 68 (1947); *Espinoza v. Montana Dep't of Revenue*, 140 S.Ct. 2246, 2258–59. *Locke* noted that anti-State-sponsored-clergy sentiment is a uniting American value that permeated all levels of founding-era and early American constitutional law, codified throughout a diverse array of state constitutions. *Id.* at 723 (listing, among others, Delaware, Kentucky, and Pennsylvania as states with constitutional provisions prohibiting tax dollars from supporting the clergy.)

Importantly, the context of *Kennedy* is that the Court overruled a prior test for when the Establishment Clause is implicated in favor of the history-and-traditions test. *Kennedy*, 597 U.S. at 535. In doing so, *Kennedy* critiqued the "invited chaos" of "different results in materially identical cases." *Id.* (internal citations and quotes omitted). Thus, the grounding of the Establishment Clause in the history-and-traditions test was meant to provide stability and predictability to the Establishment Clause precedent. *Id.*; *see also* Oliver Wendell Holmes, *The Path of the Law After One Hundred Years*, 110 Harv. L. Rev. 991, 991 (1997) ("The object of [the law], then, is prediction[.]"). The history of Supreme Court interpretations of the Establishment Clause is instructive, providing several religious hallmarks that undoubtedly are blocked by the Establishment Clauses' wall of separation: for example, the use of the government funds to prepare for ministry; coercion or forcing a citizen to "engage in 'a formal religious exercise'"; and governmental endorsement of a specific faith. *See generally Locke*, 540 U.S. (2004); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464 (2017).

On the other side of the coin, the Free Exercise Clause does not excuse the government's Establishment Clause obligation to not show favoritism or disfavoritism towards religion. For example, religious members are not granted leniency or favoritism in sentencing just because their criminal violation had "sacramental purposes," nor are governmental actions considered "coerc[ive]" simply because they inconvenience a stated religious goal. *Trinity*, 582 U.S. at 459–60 (citations omitted).

In short, the government may not "respect[] the establishment of religion," nor may it deny a benefit based off of a person's religion; rather, as *Trinity* pointed out in differentiating itself from *Locke*, a benefit may only be denied "because of what [the student] proposed *to do*– use the funds to prepare for the ministry." *Id.* at 464 (citing *Locke*, 540 U.S. at 721) (emphasis in

original); *see also Carson v. Makin*, 596 U.S. 767, 788–89 (2022) (acknowledging that *Locke* is binding law in terms of "authoriz[ing] the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.").

### A. *Locke* is precedential that the Establishment Clause is implicated, as its key elements are materially identical to Petitioner's case

First, *Locke*'s key element that the student planned to use the scholarship solely for his religious education is materially identical here. *Locke*, 540 U.S. at 716–17, 721. Similar to Petitioner, the student in *Locke* was transparent that the use of his funds and education would be only in furtherance of his religious career. *Compare Locke*, 540 U.S. at 721 ("[The student stated] his 'religious beliefs [were] the only reason for [him] to seek a college degree'") *and* R. at 55 ("We became aware through social media that [Petitioner] intended to use this degree . . . to become a Sage in the Meso-Pagan faith"), *with* R. at 56–57.[1] Nearly verbatim, both *Locke*'s student and Petitioner materially identical. *Id.*; R. at 56. Thus, *Locke* is implicated. *Kennedy*, 597 U.S. at 534.

The second materially identical element between *Locke* and Petitioner's case is the historical interest against "producing taxpayer funds to support church leaders" which is "one of the hallmarks of an 'established' religion." *Carson*, 596 U.S. at 788–89. Thus, taxpayer funds may not be used to support "vocational religious degrees." *Locke*, 540 U.S. at 722–23.

As stated above, Petitioner's explicit use of funds is the exact "essentially religious endeavor" that *Locke*'s was. *Compare Locke*, 540 U.S. at 721 *and Church*, Black's Law

[1] "Without my religious beliefs, I would have never pursued astrophysics at all . . . . [My studies] will allow for my professional and personal growth in the field. For as long as I can remember, I have always thought about becoming a First Order Sage in my faith . . . . I have received application materials [for seminary,] and am strongly considering applying[.] I have shared this possibility of social media." R. at 56–57.

Dictionary (11th ed. 2019) ("A church having stratified levels of authority . . . a shared creed and set of doctrines . . . and ruled by a common convocation of ecclesiastical head"), *with* R. at 57. (describing Meso-Americanism in materially identical terms as the Christian church, with a stratified religious hierarchy of sages, and stating that "[s]ages are the leaders of our faith and set policy and doctrine about it."). *Locke*'s reasoning "expressly turned on what it identified as the 'historic and substantial state interest' against using 'taxpayer funds to support church leaders." *Carson*, 586 U.S. at 788. Since Meso-Americanism is a religion where Sages act as ecclesiastical heads, and since Petitioner is attempting to use the scholarship funding for his application, the second key element from *Locke* is satisfied. *Id.*; *see supra note* 1.

Applying the two key elements from *Locke* to the Petitioner's claim, the claims are "materially identical cases." *Kennedy*, 597 U.S. at 534. Thus, per this Court's stated goals, *Locke* governs, and the Establishment Clause is implicated.

### B. Petitioner's Actions were coercive and an endorsement beyond *Locke*'s considerations, so had the University not taken corrective action, the University would have violated the Establishment Clause.

Where *Locke* is precedential in finding that the Establishment Clause is implicated, Petitioner's violation is more egregious than *Locke*. Had the University allowed Petitioner to use the State's publication to support his religion, Petitioner's conduct would have violated the Establishment Clause via impermissible government coercion of State-funded employees, as well as impermissible government speech endorsing the Meso-American faith.

First, Petitioner's management position over State-funded research assistants would have coerced the employees into supporting his religious conclusion, and thus his Sage application. Whereas *Locke*'s student would have limited State support to just his personal conduct,

Petitioner sought to use his management position over State-funded research assistants (RAs) to support his religious finding.

The State's grant provided Petitioner with not only his personal salary, but also "funding of [RAs]." *Compare* District Court Opinion at 5, *with Locke*, 540 U.S. at 721. These RAs were individuals funded by the State to gather and compile "raw data" into a "public dataset," for the "publication of scientific, peer-reviewed articles . . . to be published by The University of Delmont Press." District Court Opinion at 5. These RAs were expecting to work in "one of the foremost centers for celestial study in the world," staffed by "faculty members." R. at 53. They had no expectation that their names, their reputation, and their careers would be permanently affiliated with an explicit endorsement of the Meso-American faith.[2]

Since "scholarly pursuits" and writing "approved scholarly work" is a "prerequisite" to applying to be a Sage within Meso-American faith, Petitioner would have used his State-funded managerial position to force State-funded RAs to either sign their name to a religious conclusion, or to risk losing crucial authorship credit for a once-in-a-lifetime opportunity. R. at 56–57. This would have been impermissible coercion, as it "in every practical sense compelled attendance and participation in a religious exercise." *Kennedy*, 597 U.S. at 541 (citing *Lee v. Weisman*, 505 U.S. 577, 589 (1992) (internal quotation marks omitted). "[C]oercing worship amounts to an Establishment Clause violation on anyone's account of the Clause's original meaning." *Id.* at 536; *see also* Jefferson Letter, *supra*. Thus, Petitioner's conduct would have been coercive above and beyond what *Locke* contemplated.

[2] *See* Elisabeth Pain, *How to Navigate Authorship of Scientific Manuscripts*, Science.org (May 6, 2021) https://www.science.org/content/article/how-navigate-authorship-scientific-manuscripts (discussing the career importance of RAs being listed as authors).

Second, where *Locke* did not ask the State to endorse his application or religion, Petitioner's conduct would use the prestige and reputation of the University to endorse both.

Regarding his application, Petitioner admitted that "some of [his] preliminary results" prompted "multiple Sages" to suggest that his completed research would make him a "competitive candidate" as "scholarly pursuits are prerequisites to becoming a Sage." R. at 57. RAs are responsible for the preliminary gathering of "raw data," that turned into his eventual article. Thus, the explicit connection between the State-funded scientific research, his faith, and his Sage application is government endorsement far above what *Locke* contemplated.

Regarding his religion, Petitioner's article would wield governmental speech, via the University of Delmont Press, to endorse his religious views. Unlike *Locke*, where the student asked the State to fund his eventual church leadership, but never asked the State to endorse the religion itself, Petitioner would take one step further. Petitioner admitted that his "reasoned conclusion" that the RAs' data was "consistent with [the] Charged Universe Theory" is the "beginning and the end" of why he is fighting to keep his religious conclusion in the article. R. at 57. Petitioner would be using the State's premier scientific journal to publish State-funded research concluding that his personal faith is legitimate. This is a far higher degree of State involvement than *Locke* considered, and similar actions taken in other universities have been considered religious endorsements. *See* R. at 53; *see generally Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995) (discussing that when the State or University provides education, it is the State or University speaking) (citing *Widmar v. Vincent*, 454 U.S. 263, 277 (1981)). The State and University speaking an endorsement of a specific faith would have been an Establishment Clause violation within the history and context of the Clause.

Terminating Petitioner after his refusal to keep his conclusion scientific was the only way to avoid this endorsement. Thus, the University did only what was necessary to avoid a violation.

For all of the above reasons, and incorporating by reference the Court of Appeal's acknowledgment of the history and traditions that universities are entitled to significant deference to use funding and manage resources how they see fit, Petitioner's article would have been an Establishment Clause violation.

## CONCLUSION

For all the foregoing reasons, the conditions imposed under the Astrophysics Grant do not infringe First Amendment rights. Further, the Petitioner's article would have forced the University to violate the Establishment Clause, so this Court should follow its materially identical decision in *Locke*. Therefore, Petitioner's challenge should be denied, and the judgment of the Fifteenth Circuit should be affirmed.

Respectfully submitted,

Team 14

*Counsel for Respondent*

## APPENDIX A

### *Constitutional Provisions*

**U.S. Const. amend. I.**

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

## CERTIFICATE OF COMPLIANCE

Following the requirements of Rule III(C)(3) of the Official Rules of the 2024 Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Respondents, certify that:

1. The work product contained in all copies of our team's brief is, in fact, the work product of the team members.

2. Our team has complied fully with our law school's governing honor code, and

3. Our team has complied with all Rules of the Seigenthaler-Sutherland Moot Court Competition.

Team 14

Counsel for Respondents