No. 23-CV-1981

In the
Supreme Court of the United States

COOPER NICHOLAS

Petitioner,

v.

STATE OF DELMONT and DELMONT UNIVERSITY

Respondent.

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

BRIEF FOR THE PETITIONER

Team 29

ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

1. To what extent does the State violate the First Amendment when it changes the scope of a grant to exclude a particular viewpoint from being shared with the public by a private individual?
2. Does a State-Funded research study that produces results that could be interpreted as religious due to some correlations with a religion violate the Establishment Clause?

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment in the current case. R. 51. Petitioner then filed a writ of certiorari, which this Court granted. R. 59-60. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the United States Constitution 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." U.S. CONST. AMEND. I.

STATEMENT OF THE CASE

Petitioner**,** Dr. Cooper Nicholas, Ph.D. ("Dr. Nicholas"), a native of the State of Delmont, U.S.A, is a distinguished scholar. His academic achievements and accolades are many. To name some, Dr. Nicholas graduated *summa cum laude* from the Delmont University ("University") with joint degrees in astronomy and physics. R. 3. After achieving this, Dr. Nicholas obtained his doctorate

in astrophysics from The University of California, Berkeley. R. 3. His high standing in the scientific community is reflected in his academic appointments, visitorships, and post-doctoral grants, not only in America but across the world. R. 3.

While growing up, Dr. Nicholas's parents, both physicians, demonstrated their philanthropy and altruism by providing healthcare in developing countries. R. 4. Dr. Nicholas joined them in his youth. R. 4. While growing up in one of these regions, Dr. Nicholas was exposed to the Meso-American culture and eventually adopted it as his faith. R.4. Some key features of the faith, which are not exclusive to the faith or religion in general, include the study of the stars and the relationships among the planets and other celestial objects. R. 4. This exposure motivated Dr. Nicholas to pursue and accomplish his accolades in the empirically and data-driven field of science. R. 4.

Respondent, the University, opened the GeoPlanus Observatory ("Observatory") atop one of the best locations for viewing celestial phenomena from the Northern Hemisphere, Mt. Delmont. R.4. This peak, the highest in the Delmontain Mountain Range, is unique and universally considered one of the best locations for viewing celestial phenomena. R. 4. Atop this peak, one can take maximum advantage of the appearance of the Pixelian Comet, a rare event that occurs only once every ninety-seven years. R.5. Also located on the peak were a state-of-the-art telescope and access to remote astrophysical sensing equipment. To harness the opportunities presented by this sequence of events, the University sought to establish the Observatory as one of the world's foremost centers for celestial study. R. 4-5. Consequently, the University offered a state-funded grant, appropriately named the Astrophysics Grant. R. 4-5.

The Astrophysics Grant was funded and approved by the State of Delmont. R.1. Under the grant, the State provided a fund for a Principal Investigator who would receive a salary, use of the University's observatory facilities and equipment, funding for research assistants, and incidental costs

associated with the scientific study of the Pixelian Event. R. 1. The grant terms were liberal and designed to create a platform for the Principal Investigator to conduct research. *See* R. 1-2. The grant would run from March 2022 to March 2024 and require that the Principal Investigator study the event and derive subsequent conclusions that conform to the academic community's consensus view of a scientific study. R. 5. Through the grant, the State gave the Principal Investigator a blank slate of resources and the carte blanche needed to draw conclusions based on observations and data gained before, during, and after the Pixelian event. R. 1-2.

Unsurprisingly, Dr. Nicholas was awarded the Astrophysics Grant. R.3. This decision is wholly consistent with the fact that Dr. Nicholas has published widely on observational astrophysics that observes and photographs celestial phenomena and that he is the author of the leading treatise on the subject. R. 3. Moreover, "his eminence in the field and reputation as a wunderkind with intuitive, often ground-shifting observations" would suggest that he was the one to bring the sought-after fame. R. 5. Finally, of equal, if not greater, importance, Dr. Nicholas's prior history demonstrated his ability to be impartial in his duties, reflected by his being an esteemed scholar in residency at another independent research institution: the Mojave Desert region of Nevada. R. 4.

Dr. Nicholas accepted the grant and pursued his rigorous scientific inquiry. R. 6. Dr. Nicholas developed and deployed a variety of widely accepted parameters for measuring the celestial environment preceding the Pixelian Event to establish a baseline for future analysis. R. 6. Based on these widely accepted scientific research methods, Dr. Nicholas penned an article that concluded based on what the data had reported to him. R. 6. The reaction to his findings generated many discussions and response papers from other top scientists. R. 6. After the Pixelian Event finally occurred, Dr. Nicholas and his team dutifully continued with their observations and collected even more data to support his conclusions. R. 6.

The immense wealth of data collected by Dr. Nicholas saw him seek to publish his observations and interim conclusions in Ad Astra, the pre-eminent publication in his field. R. 6-7. After relaying the data, to round out the data and provide some context, Dr. Nicholas added a historical dimension that tracked and noted parallels between his data and beliefs mentioned by Meso-American indigenous tribes. R. 6-7. Dr. Nicholas surmised that the Meso-American hieroglyphs on cave walls may have depicted the same celestial array witnessed in the Northern Hemisphere. R. 6-7. These glyphs potentially memorialized what Meso-Pagans referred to as a "lifeforce," an electrical interplay that animates all living beings and holds all matter in a precarious equipoise R. 7. Finally, based on his research, he predicted that his further research and his data would substantiate the suppositions about the lifeforce suggested that the occurrence demonstrated an interaction among electrical currents, filaments, atmospheres, and formations of matter that appeared consistent with the "Charged Universe Theory." R. 7

Some deemed the Charged Universe Theory controversial. R. 7. Others were adherents of this theory. R. 7. As is typically the case with cutting-edge discovery, the Charged Universe Theory did not fit the scientific academy's consensus view. R. 7. Nonetheless, Dr. Nicholas's research was identified as "groundbreaking" for him and the scientific community, and his conclusions could not be disproved. R. 8. His work was published in Ad-Astra. R. 8.

On the 3rd of January 2024, President Seawall responded to Dr. Nicholas's groundbreaking research on behalf of the University. He was presented with an ultimatum. R. 9 – 10. Either Dr. Nicholas amends his research to align with a specific viewpoint the University wants to pursue, or he loses access to the grant. Dr. Nicholas refused to move away from the conclusions he had reached from his study. On or around the 17th of January, 2024, the University punished Dr. Nicholas by revoking his access to the Observatory. R. 11

SUMMARY OF THE ARGUMENT

This case concerns whether the State can tell a well-respected scientist what scientific data to publish and whether his objectively sourced data entails the Establishment Clause due to having minimal similarities with a religion. The answer to both these questions is no.

First, when the State tells an individual, like Dr. Nicholas, what he must or must not say, they run afoul of the First Amendment's protections. Moreover, if the State does this by promoting one view at the expense of another, the State engages in viewpoint discrimination. A practice proscribed by the First Amendment. To hold otherwise would imperil the fact that this nation's future depends upon leaders trained through broad exposure to that robust exchange of ideas that discover the truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603, (1967)

Second, Dr. Nicholas's exploration into the Charged Universe Theory and its possible connections to Meso-Paganism does not violate the Establishment Clause. The historical practices and understanding of the Establishment Clause and its intersection with education do not find that a Principal Investigator using a state-funded grant theory to investigate potential connections between science and religion is an endorsement of that religion or religion. Moreover, the University makes clear that it does not endorse Dr. Nicholas's views, and Dr. Nicholas's interest in a vocation in religion is not a surety that such a vocation will ever be sought even if the research being done could help in that pursuit. Finally, the University's deference to religion has no trace in history to apply to the Establishment Clause analysis.

ARGUMENT

I. THE UNIVERSITY VIOLATES THE FIRST AMENDMENT BY PLACING RESTRICTIONS ON WHAT A PRIVATE INDIVIDUAL CAN SAY

The First Amendment's free speech guarantee is a cornerstone of American jurisprudence. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013). It provides that a State cannot make any law that abridges the freedom of speech. *See* U.S. CONST. AMEND. I

This right, enshrined in the bedrock principles of individual liberty, empowers each citizen to define the contours of their intellectual world, free from governmental strictures dictating what must or must not be held within the sacred chambers of the mind. *See Turner Broadcasting System, Inc*. v. FCC, 512 U.S. 622, 641(1994). Moreover, this foundational right underpins the vibrant tapestry of discourse that defines our nation. It fosters the exchange of diverse perspectives and sparks the flames of progress that flow through our educational institutions since our nation's universities are steeped in "a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835-36 (1995). Thus, to infringe upon this right, to dictate the content of individual thought, is not simply to stifle expression but to encroach upon the very essence of what it means to be free in America.

The breadth of this right is reflected in the fact that State colleges and universities are not enclaves immune to the expansive sweep of the First Amendment's protections. *Healy v. James,* 408 U.S. 169, 180 (1972). Neither do the First Amendment's protections apply with less force on campuses; "quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American school.'" *Id*. at 180-181 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

Therefore, this Court should find that the University violated Dr. Nicholas's First Amendment rights because when a university amends the scope of a study done by a private individual, it triggers the First Amendment protections. Second, the nature of the restrictions is viewpoint-based, and the First Amendment forbids viewpoint-based discrimination.

a. Forcing Restrictions on the Scope of Study Done by a Private Individual Triggers the First Amendment's Protections

A public university cannot justify suppression of speech merely because it has funded the program through which the private individual speaks. *See Rust v. Sullivan*, 500 U.S. 173, 199 (1991). Even if the individual has no entitlement to the benefits available under a grant, a university may not deny that benefit on a basis that infringes the constitution. *Agency for Int'l Dev.*, 570 U.S. at 214. Instead, its "ability to control speech within [its] sphere by means of conditions attached to the expenditure of Government Funds is restricted" by certain tenets. *See Rust v. Sullivan*, 500 U.S. 173, 199 (1991).

One such tenet is that Dr. Nicholas's status as a grantee under the grant is immaterial in assessing whether a First Amendment violation has occurred. The University violates the First Amendment by preventing Dr. Nicholas from pursuing unrestricted scientific inquiry after his research presents conclusions the University disagrees with. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972). In *Perry*, this court assessed whether the First Amendment's protections were offended when an educational institution prevented a teacher from resuming work after the educational institution allegedly expressed concerns about the teacher's criticisms against the institution. *Id*. at 595. The Court reasoned that "if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited." *Id.* at 597 Therefore, the Court concluded that one's status as a grantee did not preclude their First Amendment rights from being violated in such instances. *Id*. at 596.

Another tenet is that a stipulation on funding from a government entity that operates to restrict the expression of opinions of public importance will run into the First Amendment's protections. *See FCC v. League of Women Voters*, 468 U.S. 364, 375, (1984*). League of Women Voters* clearly illustrates this fundamental principle. Here, Congress was "moved to action by a widely felt need to sponsor independent sources of broadcast programming as an alternative to

commercial broadcasting." 468 U.S. at 366. Through the Public Broadcasting Act, Congress authorized the disbursement of federal funds to noncommercial television stations to support station operations programming. *Ibid*. However, section 399 of the Act placed a condition on the recipient of the funds. *Ibid*. It prevented any "'noncommercial educational broadcasting station which receives a grant from the Corporation' to 'engage in editorializing.'" *Ibid*. The constitutionality of this condition was challenged. *Id.* at 370.

In reaching its conclusion, the Court first noted that the First Amendment "must inform and give shape" to how such burdens are placed on an entity engaging in their First Amendment rights. *See id*. at 378. Second, section 399 forecloses the expression of opinion on "'controversial issues of public importance.'" *Id*. at 381. Third, while noting that "a regulation of speech that is motivated by nothing more than a desire to curtail expression of a particular point of view on controversial issues of general interest is the purest example of a 'law . . . abridging the freedom of speech,'" the Court held that a regulation like section 399 violated the First Amendment and was therefore subject to a strict scrutiny analysis. *See id*. at 384.

Likewise, here, the Court should find that the university's post-hoc regulation of Dr. Nicholas, after disagreeing with his study's results, triggers an analysis under the First Amendment. First, like the grantee in *Perry*, Dr. Nicholas's status as a grantee under a university-administered grant does not preclude him from asserting his First Amendment rights. To find otherwise would cut against the "constitutional importance of maintaining a free marketplace of ideas, a marketplace that provides access to 'social, political, esthetic, moral, and other ideas and experiences.'" *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 583 (2011) (quoting *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

Similarly, the University's post-hoc requirement that Dr. Nicholas "limit his study and conclusions to the academic community's consensus view of scientific study" is a stipulation on funding from a government entity that plainly operates to restrict the expression of opinions of public importance. The public significance of cutting-edge science cannot be understated. Respondent admits to the public importance of the work Dr. Nicholas is engaging in. Respondent

recognizes that the Observatory may become the pre-eminent research center for celestial study because of "its unique geographical situation, its state-of-the-art telescope, and its ready access to remote astrophysical sensing equipment." The public importance of this event is also compounded by its rare occurrence: the Pixelian Comet traverses the Northern Hemisphere only once every ninety-seven years. Clearly, then, Dr Nicholas's work entails a scientific study of serious public importance. And as this Court has emphatically stated, "communication of this kind is entitled to the most exacting degree of First Amendment protection." *League of Women Voters*, 468 U.S. at 366.

Rust v. Sullivan is inapposite to Dr. Nicholas's situation and is, therefore, inapplicable. In *Rust*, the Department of Health and Human Services instituted a regulation that limited the ability of grantees from a fund to engage in abortion-related activities. *Rust v. Sullivan*, 500 U.S. 173, 178 (1991). The Court found that the regulation was consistent with the First Amendment. *Id*. at 193. This conclusion was reached because, at the program's inception, the Government made a value judgment that saw them create a program to encourage certain activities it believed were in the public interest without funding an alternative program. *Id*. at 193. The constraints at the birth of the program were designed to ensure that the limits of a program that was designed to encourage family planning and not prenatal care. *Ibid*. As far as this Court was concerned, "this is not a case of the Government 'suppressing a dangerous idea,' but of a prohibition on a project grantee or its employees from engaging in activities outside of the project's scope." *Rust*, 500 U.S. at 173 (1991).

While it is true that the grant "required the study of the event and the derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study." This requirement must be adequately contextualized. Here, at their core, the limits of the grant were to create a nexus that would leverage the genius of Dr. Nicholas and the uniqueness of the opportunity at hand to explore the celestial heavens and glean information and insights that had not yet been determined to "draw conclusions based on observations and data gathered before, during, and after the Pixelian Event." Dr. Nicholas was on a path to do exactly that.

By pursuing a course that would result in the Observatory becoming one of the foremost centers for celestial study, The University must have necessarily sought to explore uncharted areas of celestial research. Oftentimes, novel concepts challenge existing paradigms, disrupting the meticulously constructed thought frameworks underpinning our understanding of the world. Embracing a new idea is challenging because it necessitates dismantling cherished assumptions and venturing into the uncharted territory of the uncertain. This inherent risk, coupled with the cognitive energy required to overcome internal biases, fosters resistance and a clinging to the established order. The University fell into this trap. It showed its resistance to the research results of Dr. Nicholas, a summa cum laude graduate with multiple degrees, a doctorate, and multiple doctoral grants both in America and abroad. Unlike the grant and conditions at issue in *Rust*, the government here, when faced with precisely the type of results it sought, in a post-hoc manner, then attempted to redefine the purpose of the grant. This is different from observing the limits of a program established from the beginning. Instead, this is a case of a university amending the scope of the grant after disagreeing with the results, hence why *Rust* is inapposite.

Therefore, since the University cannot preclude a grantee from asserting their First Amendment rights within that program, especially when it is of public importance, this Court must scrutinize the University's actions under its established First Amendment frameworks.

b. The Nature of the Restrictions is Viewpoint Based, and the First Amendment Forbids Viewpoint Based Restrictions

The University violates Dr. Nicholas's First Amendment rights because the First Amendment prohibits viewpoint discrimination.

"There is no dispute . . . that where the government seeks to punish speech because of its viewpoint, the violation of the First Amendment 'is all the more blatant.'" *City Council v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) (quoting *Rosenberger, v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 829 (1995)). Thus, the First Amendment prohibits the government from "regulating speech when the specific motivating ideology or the opinion or

perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 819, 829 (1995). This expansive tenet applies in the context of the disqualification of government favors. *See, e.g.*, *Rosenberger,* 515 U.S. at 819, (1995) (prohibiting a public university from disbursing student activity funds on viewpoint-based terms).

Rosenberger clearly illustrates this principle in action. Petitioners sought funding as a student journal from a fund that was purposefully established to support such student activity. Rosenberger, 515 U.S. 819, at 823-826. Respondents refused to authorize payments to a third-party contractor because respondent's activity had religious connotations. *Id*. at 827. The Supreme Court held two key points. *Ibid.* First, the university had discriminated against the petitioner because of the petitioner's viewpoint in a manner that violated the First Amendment. *Id*. at 832. Second, a State may not exercise viewpoint discrimination, even when the limited public forum is one of its own creations. *Id*. at 829. In reaching this conclusion, the Court highlighted that the respondent had discriminated against the petitioner based on the religious connotations of their speech, which was the motivating factor for its decision. *See id.* at 832.

Similarly, here, the court must find that the University discriminates against Dr. Nicholas because of his viewpoint. Applying this Court's straightforward framework to the facts makes this clear. If Dr. Nicholas's scientific study continued to explore the Charged Universe theory, he would be unable to continue his research. However, if Dr. Nicholas dropped that line of inquiry, he would receive continued funding. Put differently, Dr. Nicholas can continue to receive funding if he rejects the point of view that the Pixelian event aligns with the Charged Universe theory. This is viewpoint discrimination, violating Dr. Nicholas's First Amendment rights.

Some may argue that Dr. Nicholas was not speaking on his own behalf but was a mouthpiece for government speech. *See, e.g., Rust*, 500 U.S. 173, at 194 (recognizing that when the government did not create a program to encourage private speech but used private speakers to transmit specific information, it is entitled to say what it wishes). This argument is misguided in Dr. Nicholas's context because viewpoint-based restrictions are improper when the University "does not itself speak or subsidize transmittal of a message it favors but instead expends funds to

encourage a diversity of views from private speakers." *Rosenberger*, 515 U.S. at 834. As highlighted earlier, when structuring the grant, "the purpose of the grant was to give the Principal Investigator the resources needed to draw conclusions based on observations and data gathered before, during, and after the Pixelian Event." Absent from this description was the type of specific information the court found in *Rust* to support a finding of the government using a private individual to transmit specific information. There were no hard outer limits or subject matter limitations. Instead, Dr. Nicholas was relying on funds expended to encourage a view rooted in widely accepted scientific practice from a private speaker that would establish the fame of their Observatory.

Therefore, this Court should find that the University violated Dr. Nicholas's First Amendment rights.

II. DR. NICHOLAS'S RESEARCH AS THE RECIPIENT OF THE ASTROPHYSICS GRANT DOES NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE IT IS NOT AN ENDORSEMENT OF A RELIGION

The Fifteenth Circuit erroneously held that the Establishment Clause is violated by Dr. Nicholas's assertions from his findings under the Astrophysics Grant. R. 50. Under the test reaffirmed in *Kennedy v. Bremerton School District*, the Establishment Clause must be analyzed by looking at history and traditions. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2414 (2022) (" . . .[T]he establishment Clause must be interpreted by reference to historical practices and understandings) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). Further, the line for courts and governments for what is "permissible and impermissible" must correspond with the history and understanding of the Founding Fathers. *Id.* at 535. (citing *Town of Greece,* 572 U.S. at 577).

Here, when looking at history and tradition, there is no clear and consistent understanding that state funds that may have a connection to religion or an amorphous connection to a religious vocation violate the Establishment Clause. Dr. Nicholas's interest in a theory about the universe that goes

against the consensus view in the scientific community and its potential connection to religious symbolism cannot be seen as an endorsement of religion by the State or the University. Additionally, Dr. Nicholas's expression of potentially using such research for a religious vocation is not a clear showing of a state-supported clergyman because it is not a surety that he will pursue that route. Moreover, the Fifteenth Circuits' reliance on *Locke v. Davey* is misplaced as the current case is factually and logically distinguishable. Lastly, deference to university decision-making does not apply to Establishment Clause claims because there is a lack of history in it being so.

a. The Establishment Clause is not implicated in the current case

The Establishment Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion . . ." U.S. CONST. AMEND. I. The Court has instructed that the Establishment Clause must be interpreted by "reference to historical practices and understandings." *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 535 (2022) (citing *Town of Greece*, 572 U.S. at 576 (2014). The Establishment Clause does not require a separation between church and state in all instances. *Walz v Tax Comm'n. of City of New York*, 397 U.S. 664, 669 (1970) ("The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State.") (citations omitted) The Establishment Clause does not "compel the government to purge from the public sphere anything an objective observer could reasonably infer endorses or "partakes of the religious." See *Kennedy*, 597 U.S. at 535 (2022) (reasoning that the District Court's premise that the establishment clause is offended whenever a reasonable observer could conclude that the government has endorsed religion is flawed) (citations omitted).

Throughout American history, the public has sought a line between the State and Religion especially through means of ensuring taxpayer dollars are not going to support church leaders. *See* R. Butts, The American Tradition in Religion and Education 15–17, 19–20, 26–37 (1950).

However, this Court has recognized there are exceptions to this expectation. A neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit receipts does not offend the Establishment Clause. *Carson as next friend of O. C. v Makin*, 596 U.S. 767, 768 (2022). *See also Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (". . . a government aid program is neutral with respect to religion and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools [on] their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause.")

There is a limit to how far a state can go to separate church and state to not run afoul of the Establishment Clause. Missouri could not force the Trinity Lutheran Church of Columbia to "renounce its religious character" to participate in an otherwise generally available public benefit program for which it is qualified. *See Trinity Lutheran Church of Columbia, Inc v. Comer* 582 U.S. 449, 466 (2017) (" . . . [T]he Department offer nothing more than Missouri's policy preference for skating as far as possible from religious establishment concerns.")

Here, Respondent's publishing of Dr. Nicholas's Materials cannot be seen as an endorsement of the Meso-Pagan religion. Dr. Nicholas advances a legitimate cutting-edge scientific theory recognized by members of the science community; it is simply not the view the University agrees with. R.7-8. Even if a neutral observer may interpret the University publishing of Dr. Nicholas's research as an endorsement of religion, the Establishment Clause does not require the University to censor it. See *Kennedy*, 597 U.S. at 535 (reasoning that the Establishment Clause does not "compel the government to purge from the public sphere "anything an objective observer could reasonably infer endorses . . . the religious."). The University need not abandon publishing the research as it would not be a violation of the Establishment Clause.

b. The Fifteenth Circuits' reliance on *Locke v. Davey* is misplaced

The Fifteenth Circuit erroneously asserts that *Locke v. Davey* is a binding precedent under the facts of the current case in its Establishment Clause analysis. R. 46. The facts in Locke are significantly distinguishable from the facts here. In *Locke v. Davey*, the state of Washington established a scholarship program to financially assist academically gifted students with expenses at an eligible postsecondary institution in the state of Washington. *Locke v Davey,* 540 U.S. 712, 715-716 (2004). A scholarship recipient may not pursue a degree in theology while receiving the scholarship. *Id.* at 716. The scholarship prohibited providing funds to students to pursue degrees that are "devotional in nature or designed to induce religious faith" to comport with Washington State's constitution. *Id.* at 716. The institution, not the state, determined whether the student's major was devotional. *Id.* at 717.

The student, in *Locke*, chose to attend a private Christian College and had "planned for many years to attend a Bible college" to serve a life of religious ministry, specifically as a church pastor *Id.* He pursued a double major, including a major in pastoral ministries, which is clearly devotional and excluded under the scholarship program. *Id.* He refused to sign a form stating he was not pursuing a devotional theology degree, thus stopping him from receiving any scholarship funds. *Id.* The Court held that excluding devotional degrees from the scholarship program did not violate the Free Exercise Clause. *Id.* at 715. ("We hold that such an exclusion from an otherwise inclusive aid program does not violate the Free Exercise Clause of the First Amendment.") The Court reasoned that States, since the founding, have had constitutional provisions that have prohibited tax dollars from being used to support the clergy., *Id.* at 723-724. Thus, Washington State's interest in limiting the scholarship from "funding the pursuit of devotional degrees" is substantial, and the limit places only a "relatively minor burden" on the scholarship recipients. *Id.*

at 725. (stating that the denial of funding for religious instruction alone is not inherently constitutionally suspect).

In the current case, the state-funded grant is not an issue of the Free Exercise Clause like in *Locke* but one of the Establishment Clause. R. 60. While this Court has recognized that the Establishment Clause and Free Exercise Clause may complement each other, they are still distinct and require different analyses. See *Kennedy*, 597 U.S. at 533. (". . . A natural reading of that sentence would seem to suggest the Clauses have "complementary" purposes, not warring ones where one Clause is always sure to prevail over the others.") (citations omitted)

Unlike the student in *Locke*, Dr. Nicholas did not have a lifelong goal of pursuing science to prove his religious beliefs. While he was inspired to pursue astrophysics due to his religious beliefs, it was not the reason behind all his educational pursuits. While Dr. Nicholas may use the study to apply to become a Sage in the Meso-Pagan faith, it is not a surety. R. 9. *See also* Nicholas Aff. 15.

Furthermore, Dr. Nicholas was chosen due to his "eminence in the field and reputation as a wunderkind with intuitive, often ground-shifting observations." R. 5. Exploring a theory that is controversial and may have a connection to religion cannot be interpreted as Dr. Nicholas using his academic work as "akin to a religious calling." *See Locke* 540 U.S. at 721. (" . . . majoring in devotional theology is akin to a religious calling as well as an academic pursuit.") This is not an example of state-supported clergy. While the Respondent may not agree with the Charged Universe Theory, it is not solely religious. Respondent has allowed other scientists on the University's faculty to reference or rely upon the writings of other pagans, such as the Greeks, Romans, Incas, and Phoenicians. R.10. *See also* Nicholas Aff. 18.

Additionally, the Court has recognized that the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs. *Espinoza v Montana Dept. of Revenue*, 140 S.Ct 2246, 2254 (2020) (holding that a scholarship program that prohibits the distribution of funds for any religious purpose, to any religious body, or scientific institution controlled whole, or part of by a religious denomination does not violate the establishment clause). Here, the Charged Universe Theory is not dependent on any religion, not even Dr. Nicholas's religion. Both the scientific community and the religious groups that may subscribe to the Charged Universe Theory benefit from Dr. Nicholas's research under the Astrophysics grant.

c. Deference to University Decision making does not apply here

An argument that deference should be given to university decision-making when the decision making is constitutionally suspect is a dangerous precedent to set. The line of cases the Fifteenth Circuit relied on in arguing in support of deference to university decision-making: *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003); *Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 225 (1985); *Board of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78 (1978); *Regents of Univ. of California v. Bakke,* 438 U.S. 265 (1978) do not take into account religion at any level. All the cited cases by the circuit court are void of a discussion of religion in the University amongst faculty or students or how it interacts with the Establishment Clause.

For these cases to be applicable here, an analysis of the history of the Establishment Clause and deference in public educational settings regarding religion must be conducted under the test set out in *Kennedy v. Bremerton School Dist. See* 597 U.S. 507, 535(". . . [T]he Establishment Clause must be interpreted by reference to historical practices"). The Fifteenth Circuit does not

provide any historical analyses in advancing its argument regarding deference to university decision making.

CONCLUSION

For the foregoing reasons, Dr. Nicholas asks this Court to reverse the Fifteenth Court of Appeals. This Court should hold the University's' conditions on the Astrophysics Grant recipient as a violation of the First Amendment. Additionally, state-funded research that may correlate with religion does not violate the Establishment Clause.

Respectfully submitted,

/s/ TEAM 29

ATTORNEYS FOR PETITIONERS

DATED: February 1, 2024

CERTIFICATE OF COMPLIANCE

Following the requirements of Rule IV(C)(3) of the Official Rules of the 2023-24 Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Petitioner, 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 29

Counsel for Petitioner