No. 23-CV-1981

In the

Supreme Court of the United States

March Term 2024

COOPER NICHOLAS,

v. *Petitioner,*

STATE OF DELMONT and DELMONT UNIVERSITY

Respondent.

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

BRIEF FOR RESPONDENT

TEAM 30
Counsel for Respondent

January 31, 2024

QUESTIONS PRESENTED

I. Does a state's grant condition which requires its recipient publish conclusions which conform with the academy's consensus view of what is scientific impose an unconstitutional condition on speech?

II. 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?

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The opinion of the United States District Court for the District of Delmont, Mountainside Division, is unpublished and may be found at *Nicholas v. Delmont*, C.A. No. 23-CV-1981 (D. Delmont Feb. 20, 2024). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *Delmont v. Nicholas*, C.A. No. 23-1981 (15th Cir. Mar. 7, 2024).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered summary judgment. R. at 51. Petitioner then filed a writ of certiorari, which this Court granted. R. at 59–60. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. CONST. amend. I.

28 U.S.C. § 1254(1).

The complete text of these provisions and statutes may be found in Appendix A.

STATEMENT OF THE CASE

In 2020, after years of fundraising, Delmont University opened The GeoPlanus Observatory, a state-of-the-art research facility that the University hoped would become one of the foremost centers for scientific study in the world. R. at 52. In order to achieve this goal, the University created an Astrophysics Grant to fund research of the Pixelian Comet, which appears only once every ninety seven years. *Id.* The grant would pay for one scientist's salary, equipment, research assistants, and incidental costs of the study for two years. R. at 5. The grant was widely publicized to influential scientists, researchers, and academics in the field of astrophysics, and the application process for it was extremely competitive. *Id.*

Cooper Nicolas was awarded the highly sought-after position at Delmont University. *Id.* An expert in the field of astrophysics with a reputation of being a "wunderkind," Nicholas had a sterling reputation that reflected positively on the University. R. at 2, 5. He was published widely and had been the recipient of academic appointments, visitorships, and post-doctoral grants around the world. R. at 3, 6. To accept the grant, Nicholas took a leave of absence from his position as a scholar in residence at The Ptolemy Foundation and came to Delmont. R. at 5.

Nicholas's new position at the University required collecting raw data and publishing a summative monograph of the Pixelian Comet. R. at 2. The only requirement regarding his ultimate conclusions was that such conclusions "conform to the academic community's consensus view of a scientific study." R. at 5. At the close of the grant, Nicholas's work would be published by, and bear the name of, The University of Delmont Press. *Id.*

Much to the shock of Delmont University, the scientific community, and even his own colleagues, Nicholas's initial results from the study strayed far from the academic community's consensus and instead promoted the Charged Universe Theory, a highly controversial idea many compared to medieval alchemy rather than science. R at 9–10. It posits that electrical interaction between the atmosphere and matter, including living organisms, is responsible for certain cosmological phenomena, like the Pixelian Comet. R. at 57. In comparison, other scientists explain such phenomenon with the concept of gravity. R. at 7. Nicholas managed to publish this theory in Ad Astra magazine, but only after a month-long conversation with the publisher and only with an editorial "asterisk" stating that such views were not endorsed by any of the magazine's editors or staff. R. at 7–8. The academy concluded that the theory was "unprovable from a scientific standpoint" and completely inconsistent with the scientific community. R. at 10. It is consistent, however, with Nicholas's Meso-Paganist religion and its teaching on "the lifeforce," which Meso-

Paganists believe is an energy connecting the sun, moon, and stars with living organisms. R. at 56–57.

Nicholas's work and excitement for astrophysics had apparently been inspired by his Meso-Paganist faith for his entire life. R. at 55–56. Religion was of central importance in his studies. R. at 56. In fact, without his religious beliefs, Nicholas would never have pursued astrophysics at all. *Id.* Unbeknownst to Delmont University, Nicholas had also dreamt of becoming a Sage in his Meso-Paganist faith his entire life . R. at 57. In order to do so, he had to first submit an approved scholarly work on "the lifeforce." *Id.* Nicholas's work at Delmont with the Charged Universe Theory would fulfill this prerequisite. *Id.* Now, Nicholas is in his own words, "strongly considering applying" to become a First Order Sage at a Meso-Pagan seminary, and has already obtained the application materials. *Id.* Furthermore, he has announced to the world via his social media that he is likely to become a Meso-Pagan Sage. *Id.*

Nicholas's announcement subjected Delmont University to ridicule on late night shows, slowed the applications for post-graduate studies, embarrassed donors, legislative, and executive supporters of the Astrophysics Grant. R. at 9. This public debacle mirrored a previous incident caused by a grant-recipient in Delmont's Anthropology Department who made similar dubious religious propositions resulting in academics and donors questioning the quality and reputation of the entire department. R at 53. That incident remains an ongoing problem for Delmont to this day. R. at 53. Desperate to avoid another blow to its reputation, Delmont asked Nicholas to conform his results with the requirements of the grant, but he refused. R. at 10. Delmont denied him access to the Observatory, concluding his participation with the grant program. R. at 11.

SUMMARY OF THE ARGUMENT

I. QUESTION PRESENTED ONE

We respectfully request that the opinion of the Fifteenth Circuit be affirmed. First, Delmont's grant is an example of a government program communicated through private speakers. Since its primary goal is to communicate the government message that the new Observatory is one of the foremost centers of for celestial study in the world, Delmont's grant is not subject to the same content restrictions as government restrictions of private speech and is thus constitutional.

Second, even if the Court finds that Delmont's grant subsidizes private speech, the grant does not create any unconstitutional conditions or restrictions on viewpoint which would violate the Free Speech Clause. Delmont's grant condition does not prevent Nicholas from expressing his views about the Charged Universe Theory outside of the grant program, nor does it punish or fine him in a way that would make the grant unconstitutional. It also does not discriminate on viewpoint since any content discrimination the condition imposes is permissible as an excellence criterion.

Finally, even if the Court finds that the condition is discriminatory based on viewpoint or places an unconstitutional condition on speech, the condition nevertheless survives strict scrutiny. Delmont's desire not to violate the Establishment Clause is a compelling government interest and its grant condition is narrowly tailored to address that interest.

II. QUESTION PRESENTED TWO

Delmont's continued funding of Nicholas's research relating to the Meso-Pagan religion would violate the Establishment Clause of the First Amendment. First, Nicholas intends to become a sage in the Meso-Paganist Faith and will use Delmont's grant in pursuit of his vocational religious studies. Because state funding of vocational religious studies violates the Establishment

Clause and Delmont's denial of funds does not implicate Nicholas's free exercise of religion, Delmont cannot be required to publish Nicholas's unprovable religious conclusions.

Second, even if the Court were to determine that Nicholas's conclusions do not violate the Establishment Clause, the University is entitled to substantial deference in its decision making. Given the significant and disastrous financial and reputational repercussions that Delmont has faced in similar situations, the University's decision should be conclusive. Thus, we respectfully request that the opinion of the Fifteenth Circuit Court of Appeals be affirmed.

ARGUMENT

I. DELMONT'S GRANT CONDITION DOES NOT VIOLATE THE FREE SPEECH CLAUSE

The condition placed on Delmont's grant funding does not violate the Free Speech Clause of the First Amendment.[1] When it comes to providing government benefits, the First Amendment prevents a person from being denied a benefit because of their constitutionally protected speech since "[t]his would allow the government to 'produce a result which [it] could not command directly.'" *Rust v. Sullivan*, 500 U.S. 173, 212–13 (1991) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)).

However, when the government speaks for itself, it does not face the same constitutional limits on content regulation that it faces when regulating private speech—even when it uses private individuals to transmit that speech. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541 (2001). Additionally, when such programs are instead determined to be a government subsidy of private speech provided by the government, the government may permissibly place conditions on those

1. Under the First Amendment to the U.S. Constitution, "Congress shall make no law . . . abridging the freedom of speech." U.S. CONST. amend. I. This requirement also applies to the states and their actors, including the State of Delmont and Delmont University. R. at 14; *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995).

subsidies if they are reasonable and (1) do not place an unconstitutional condition on the grant (2) or do not discriminate based on viewpoint. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998). Finally, even when conditions do discriminate on viewpoint or place an unconstitutional condition on funding, they may still be constitutional if they pass strict scrutiny. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992); *Daunt v. Benson*, 999 F.3d 299, 319 (6th Cir. 2021) (applying strict scrutiny if it was assumed that a condition was unconstitutional).

A. Nicholas's Article is Government Speech Advanced by a Private Party Since it Advances a Government Message

Cooper Nicholas's speech is advancing a government message and thus is not subject to the normal viewpoint restriction on government funding decisions. *Velazquez*, 531 U.S. at 541. In fact, "[i]t is the very business of government to favor and disfavor points of view on . . . innumerable subjects" and may do so by giving money to others to achieve or advocate it. *Finley*, 524 U.S. at 598. The determination of whether a program is merely a government subsidy of private speech, or government speech, turns on whether the subsidy is "designed to facilitate private speech" or instead "promote a governmental message." *Velazquez*, 531 U.S. at 542. One indicator that speech is private is when a condition controls the medium of expression in a way which distorts its function. *Id.* at 543.

Here there is no intent to facilitate private speech, merely the governmental message that the new GeoPlanus Observatory is one of the "foremost centers for celestial study in the world." R at 5. The grant and Nicholas's publication of conclusions are merely means for advancing this message. The grant is designed to show that the GeoPlanus Observatory is state-of-the-art. *Id.* The grant concludes with a publication of a "summative monograph of the event" and the "raw data"

collected through the observatory thus showing the technological advancement of the observatory. R. at 2. The competitive process for selecting a grant recipient itself shows that the purpose was to identify highly influential scientists, like the "wunderkind" Nicholas, to raise the profile and prestige of the Observatory. R at 2, 5. The data itself, collected over two years, showed that the Observatory was able to provide significant value to the greater scientific community thus advancing its message. R. at 5. Additionally, Nicholas's work would be published by, and bear the name of, The University of Delmont Press thus solidifying the fact that the government is speaking, not Nicholas. *Id.*

Further, this restriction does not suggest that its purpose was to facilitate private speech by distorting the article's usual function. For example, in *Velazquez*, the Court found that a condition placed on a government funded legal assistance program was subsidized private speech, not government speech, since it restricted the recipients from providing legal advice on questioning the validity of statutes under the United State Constitution. *Velazquez*, 531 U.S. at 542, 544. In contrast, Delmont's condition merely restricts a person from discussing non-scientific topics as defined by the views of the academic consensus. R. at 37. Non-scientific topics are, by definition, outside the scope of a scientific paper and thus the condition does not distort the function of such a paper. Therefore, Delmont's grant program is government speech, and its condition is constitutional.

B. Even if Nicholas's Speech is Government Subsidized Private Speech, the Condition on Delmont's Grant Funding is Constitutional and Not Based on Viewpoint

Even if the court determines that the speech is a government subsidy of private speech, the conditions placed on such speech are valid: "[W]hen 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

general recourse is to decline such funds unless (1) the government places unconstitutional conditions on such a benefit or (2) the benefit discriminates based on viewpoint. *Agency for Int'l Dev.*, 570 U.S.at 214; *Finley*, 524 U.S. at 587.

1. Delmont's Condition Is Constitutional Since it Is Not Coercive, Penalizing, and Does Not Suppress Ideas

Delmont's condition on its grant funding is not unconstitutional. An unconstitutional condition occurs only when it "den[ies] a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech." *Perry*, 408 U.S. at 597. Such a condition arises only when it is manipulated to have a coercive effect, places a penalty on a recipient's speech, or is designed to or has the effect of suppressing ideas. *Finley*, 524 U.S.at 587; *Speiser v. Randall*, 357 U.S. 513, 518 (1958); *Regan v. Tax'n With Representation of Wash.*, 461 U.S. 540 (1983). Otherwise, the recipient of such funding should simply decline the funds. *Agency for Int'l Dev.*, 570 U.S.at 214.

a) Delmont's Conditions Are Not Coercive Since Nicholas Can Publish His Charged Universe Theory Outside of Delmont's Grant

In general, denial of participation in a subsidy scheme does not "infringe" on a fundamental right unless such a subsidy "were 'manipulated' to have a 'coercive effect.'" *Finley*, 524 U.S.at 587; *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 237 (1987) (Scalia, J., dissenting). To be considered coercive it must place the restriction on the recipient, rather than on the program "thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program." *Rust*, 500 U.S. at 197.

For example, in *Rust*, the government placed conditions on receiving Title X funding which limited the doctor recipients' ability to engage in abortion-related activities. *Id.* at 177–178. The court held that the restriction was constitutional since the Title X grantee was not required to give

up abortion-related speech completely, it "merely required that the grantee keep such activities separate and distinct from their Title X activities." *Id.* at 196. Similarly, this grant does not prevent Nicholas from making Charged Universe Theory related speech outside of the grant program. Nicholas is free to advance the Charged Universe Theory in all other publications and positions outside of this public grant.

As a result, Delmont's condition will not result in hypocrisy. Nicholas is not required to reach conclusions he does not believe in; for example, he may reach intermediate conclusions which are both consonant with the Charged Universe Theory and which fit within the conditions of the grant. Moreover, the grant does not require that Nicholas disprove the Charged Universe Theory. As a result, Delmont's condition in no way requires Nicholas to take a hypocritical position. *See Agency for Int'l Dev.*, 570 U.S.at 210, 219 (finding that a grant condition which required a nongovernmental organization adopt a policy "explicitly opposing prostitution and sex trafficking" was unconstitutional since the arrangement did "not afford a means for the *recipient* to express *its* beliefs" except "at the price of evident hypocrisy" (emphasis original)).

b) Delmont's Condition is Constitutional Since the Denial of a Grant Does Not Act as a Fine

Delmont's condition does not operate as a penalty on Nicholas's speech. The Court has found in the past that the denial of a tax "exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech." *Speiser*, 357 U.S. at 518. This rule applies even to benefits that a person has no entitlement to. *Agency for Int'l Dev.*, 570 U.S. at 214.

However, grants are not taxes. Unlike *Speiser* where a tax exemption requiring veterans to take an oath not to overthrow the government acted as a "fine," here the government is disbursing

funds for a governmental program. *Speiser*, 357 U.S. at 518. The fact that a person does not conform with a government program for which they receive funding is not the same as being fined through denial of a tax exemption. In tax, a citizen *loses* money that they would otherwise have but-for their speech, thus acting like a fine. In grants, a grantee simply does not *gain* money. Put simply, the denial of a grant does not put a person in a worse position than they were originally, while denial of a tax exemption does. Thus, the denial of a grant is not a fine or penalty. *See United States v. Am. Libr. Ass'n, Inc.*, 539 U.S. 194, 212 (2003) (finding that the denial of grant funding to libraries which did not choose to install porn-filtering software was not a penalty since "[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." (quoting *Rust,* 500 U.S. at 193)).

c) Delmont's Condition Is Constitutional Since It Merely Defines the Medium it Wishes to Support and Has Not Effectively Suppressed Nicholas' Ideas

There is no evidence that Delmont's grant condition suppresses ideas and thus is constitutional. A condition is unconstitutional if it is "primarily 'aimed at the suppression of dangerous ideas.'" *F.C.C. v. League of Women Voters of Cal.*, 468 U.S. 364, 407 (1984) (quoting *Cammarano v. United States*, 358 U.S. 498, 513 (1959)). However, a condition that is not "intended to suppress any idea" and does not have that effect is constitutional. *Regan*, 461 U.S. at 548 ("Congress has not violated [the nonprofit's] First Amendment rights by declining to subsidize its First Amendment activities.")

For example, in *Leathers*, the Court found that a sales tax which applied to cable television services, but exempted newspapers, magazines, and scrambled satellite broadcast television was not directed at nor presented a danger of suppressing particular ideas since differential taxation of these media groups alone did "not implicate the First Amendment." *Leathers v. Medlock*, 499 U.S.

439, 442–43, 453 (1991). Similarly, Delmont's grant condition is merely meant to differentiate between the media that it has deemed worth supporting—papers on scientific subjects—and media it has not—papers on non-scientific subjects. Because the grant does not discriminate against specific viewpoints within the medium of a scientific paper, the condition is constitutional. *See Brooklyn Inst. of Arts and Scis. v. City of New York*, 64 F. Supp. 2d 184, 200 (E.D.N.Y. 1999) (finding an intent to discriminate by the government only when the city admitted "by its own words" that its purpose was "directly related, not just the content of [an] Exhibit, but to the particular viewpoints expressed.")

Further, this condition does not have the effect of suppressing ideas. Nicholas has already published some of his Charge Universe Theory ideas in *Ad Astra*. R. at 7. As a result, this condition has not effectively suppressed his ideas. *See Machete Prods., L.L.C. v. Page,* 809 F.3d 281, 290 (5th Cir. 2015) (finding that denial of a Texas government grant which conditioned movie production funding on portraying Texans in a positive light did not effectively preclude a production for having a particular viewpoint since, despite the denial, the movie was still filmed in Texas, produced, and released.)

d) Delmont's Condition is Constitutional Since it Was Reasonable for Nicholas to Decline the Funds

Nicholas should have declined the grant funds. When the government places a condition on funding, declining funds is appropriate if the condition still offers a "reasonable" choice to decline the funds. *Rumsfeld v. F. for Acad. and Institutional Rts., Inc.*, 547 U.S. 47, 59 (2006) (citing *Grove City College v. Bell*, 465 U.S. 555 (1984)). This is true even when "the objection is that a condition may affect the recipient's exercise of its First Amendment rights." *Agency for Int'l Dev.*, 570 U.S.at 206.

Nicholas faces a reasonable choice in choosing to accept or decline Delmont's grant condition. Nicholas is a scientific "wunderkind" whose eminence and reputation will likely provide him with many opportunities beyond Delmont's grant. R. at 5. In fact, to accept the grant, he had to take a leave of absence from his current position as a scholar in residence at The Ptolemy Foundation. *Id.* Thus, the grant offer did not create an unreasonably compelled economic choice since he left another job to pursue the grant. Additionally, Nicholas has been published widely, including a recently published article in *Ad Astra*, and has been the recipient of "academic appointments, visitorships, and post-doctoral grants in America and abroad." R. at 3, 6. Thus, Delmont's grant condition also did not create an unreasonably compelled professional choice. Because the grant condition did not create an unreasonable choice, Nicholas should have declined the grant. *See Regan*, 461 U.S. at 550 (finding that although the denied recipient of a tax exemption did "not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution 'does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.'" (quoting *Harris v. McRae*, 448 U.S. 297, 318 (1980)).

2. Delmont's Condition Does Not Discriminate Based on Viewpoint

Delmont's funding condition also does not discriminate based on viewpoint. While the government may not discriminate based on viewpoint without passing strict scrutiny, "the Government has broad discretion to make content-based judgments in deciding what private speech to make available to the public." *Am. Libr. Ass'n*, 539 U.S. at 204; *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000). In competitive processes like grant funding applications, where "the Government does not indiscriminately 'encourage a diversity of views from private speakers,'" the government is allowed to enforce inherently content-based excellence thresholds for funding. *Finley*, 524 U.S.at 586, 586, 588. (quoting *Rosenberger*, 515 U.S. at 834)

("[A]lthough the First Amendment certainly has application in the subsidy context, we note that the Government may allocate competitive funding according to criteria that would be impermissible were direct regulation of speech . . . at stake.")).

Delmont's grant condition represents a content-based "excellence" criteria and thus is not viewpoint discrimination. In *Finley* the Court found that a condition limiting NEA grants to only those which were artistically excellent, based in part on the criteria of "decency" and "respect for the diverse beliefs and values of the American public" was not viewpoint discrimination. *Finley*, 524 U.S. at 576, 586. The Court reached this conclusion because denying grant applications which did not meet this "excellence" criteria was a permissible "content-based consideration[] that may be taken into account in the grant-making process" as a "consequence of the nature of arts funding." *Id.* at 586.

Delmont's restriction is a similarly permissible "excellence" standard. By requiring that any conclusions conform to a consensus view of a scientific study, Delmont ensures that its grant funding is only given to a deserving recipient. Nicholas's Charged Universe Theory falls far below this standard of excellence. His intermediate conclusions in *Ad Astra* were only published after a month-long conversation with the publisher and were only allowed after including an editorial "asterisk" stating that such views were not endorsed by any of its editors or staff. R. at 7–8. The academy concluded that the theory was "unprovable from a scientific standpoint," medieval, and closer to alchemy than science. R at 9–10. Nicholas's disastrous results show how critical it is that Delmont be able to restrict its funds to only those works which are "excellent" enough to meet its funding goals.

C. Delmont's Condition Passes Any Level of Scrutiny and Thus is Constitutional

Delmont's condition also passes any level of constitutional scrutiny. In the unlikely event that the Court determines that Delmont's condition is an unconstitutional condition or a restriction on viewpoint, the Court must apply strict scrutiny. *Playboy*, 529 U.S. at 813; *Daunt*, 999 F.3d at 319. Such scrutiny requires that the restriction be "narrowly tailored to serve compelling state interests." *R.A.V.*, 505 U.S. at 395. However, if the Court determines that this is a permissible content restriction and a constitutional condition, it must merely pass rational basis review. *Maher v. Roe*, 432 U.S. 464 (1977); *Regan*, 461 U.S. at 549. Such a review requires only that the restriction bears a rational relationship to a legitimate state interest. *Harris*, 448 U.S. at 324.

Delmont's condition passes rational basis review since it rationally furthers several legitimate interests. Delmont desires to make a name for itself as one of foremost centers for celestial study which it furthers by requiring the grant be sufficiently scientific. R at 52. By straying outside of academy consensus Nicholas subjected the university to ridicule on late night shows, slowed the applications for post-graduate studies, embarrassed donors, legislative, and executive supporters of the Astrophysics Grant. R. at 9. This backlash to Nicholas's *Ad Astra* article demonstrates the rational nature of the grant condition. Further, a previous grant in Delmont's Anthropology Department had resulted in dubious religious positions which had resulted in the academic community and donors questioning the quality and reputation of the entire department. R at 53. Such a restriction ensures similar doubt about the observatory will not occur. Thus, by requiring the grant conclusions conform to the academic consensus, Delmont rationally furthers its interest in propelling its new observatory to the forefront of scientific inquiry. R at 52.

Additionally, Delmont's condition passes even strict scrutiny. A university has a compelling state interest in complying with its Establishment Clause obligations. *Rosenberger*, 515 U.S.

at 892 (citing *Widmar v. Vincent*, 454 U.S. 263, 271 (1981)). The university had seen other academic institutions publish similar religious ideology in scientific journals which had resulted in a public branding of those institutions as religious. R. at 53. Delmont's condition only prevents speech which falls outside of the academy consensus of a scientific conclusion. R. at 10. Any conclusions about the Pixelian Event which become so divorced from science and thus become (as seen here) "unprovable," is necessarily religious in nature. R at 9. Because it effectively only restricts non-scientific, and thus religious, speech, this condition is narrowly tailored to meet the University's Establishment Clause obligations.

II. DELMONT'S CONTINUED FUNDING OF NICHOLAS WOULD VIOLATE THE ESTABLISHMENT CLAUSE

Delmont's continued funding of Nicholas's research relating to the Meso-Pagan religion would violate the Establishment Clause of the First Amendment.[2] The Establishment Clause prevents the government from creating a church, endorsing religion, or favoring one set of religious beliefs over another. In the words of Thomas Jefferson, this clause was "intended to erect 'a wall of separation between Church and State.'" *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 16 (1947). Since then, the Court has acknowledged that "[n]o perfect or absolute separation is really possible," but certain government actions remain solidly outside of that wall. *Walz v. Tax Comm'n of New York*, 397 U.S. 664, 670 (1970).

One such example is government funding of clergy. The Court has declared that there are "few areas in which a State's antiestablishment interests come more into play" than when it is forced to fund a student's vocational religious studies. *Locke v. Davey*, 540 U.S. 712, 725 (2004)

2. Under the First Amendment to the U.S. Constitution, "Congress shall make no law respecting an establishment of religion." U.S. CONST. amend. I.

(holding that a state-sponsored scholarship program excluding students pursuing devotional theology degrees was constitutional). The Establishment Clause prevents public funds from being used for any study "that resembles worship and manifests a devotion to religion and religious principles in thought, feeling, belief, and conduct." *Calvary Bible Presbyterian Church v. Board of Regents*, 72 Wash. 2d 912, 919 (1967) (en banc). More recently, the Court has articulated the *Locke* rule as extending to any funds "intended to be used 'to prepare for the ministry.'" *Carson ex rel. O. C. v. Makin*, 596 U.S. 767, 770 (2022).

Additionally, Delmont's expenditure of funds is a complex university decision that deserves deference. It is well-established that universities—not the courts—are best equipped to "make academic judgments as to how best to allocate scarce resources" and to "determine . . . who may be admitted to study." *Widmar v. Vincent*, 454 U.S. 263, 276 (1981).

A. Funding Clergy Violates the Establishment Clause, and Nicholas Intends to Become a Clergyman

The history and tradition of our nation indicate a deep concern over state-sponsored clergy.[3] In 1785, James Madison wrote his Memorial and Remonstrance, in which he argued on behalf of Virginians who had "reached the conviction that individual religious liberty could be achieved best under a government which was *stripped of all power* . . . to support or otherwise to assist any or all religions." *Everson*, 330 U.S. at 11 (emphasis added). Thomas Jefferson echoed these sentiments a few years later when he wrote of a wall of separation between Church and State. Centuries

3. The most recent Supreme Court Cases have stressed the importance of history and tradition when assessing violations of the First Amendment's religion clauses. *See, e.g.*, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022) (considering "the foremost hallmarks of religious establishments the framers sought to prohibit" in assessing whether there had been a violation of First Amendment religious liberties).

later, Supreme Court cases continue to acknowledge the "'historic and substantial' tradition . . . against state-supported clergy." *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2259 (2020).

The Fifteenth Circuit found Delmont's funding of Nicholas to fall squarely within the category of state-supported clergy and applied *Locke v. Davey*. This Court should do the same because the facts of that case are nearly identical to this one. In *Locke*, the State of Washington created a scholarship program to fund high-achieving students and pay any of their education-related expenses, including room and board. *Locke*, 540 U.S. at 715. The program was competitive, requiring students to graduate in the top 15% of their class or receive exceptionally high scores on their standardized tests. *Id*. at 716. However, the program excluded students whose studies were "devotional in nature or designed to induce religious faith." *Id*. Importantly, it was the university that determined whether a student's major was devotional. *Id*.

Like Washington's scholarship program in *Locke*, Delmont created an Astrophysics Grant to fund a scholar who would conduct a scientific study of the Pixelian Comet and pay for their salary, equipment, research assistants, and incidental costs of the study. R. at 5. The program was competitive, widely publicized and highly sought-after. R. at 2, 5. However, it required that "the study of the event and the derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study." R. at 5. Just as in *Locke*, where the university determined whether a student's major was devotional, Delmont University should be allowed to determine whether a study is scientific.

1. Nicholas Intends to Become a Sage in the Meso-Paganist Faith

For his entire life, Nicholas's work and excitement for astrophysics has been inspired by his Meso-Paganist faith. Religion is of central importance in his studies. R. at 56. In fact, without his religious beliefs, Nicholas would never have pursued astrophysics at all. *Id.* For his entire life,

Nicholas has also dreamt of becoming a Sage in his Meso-Paganist faith. R. at 57. To do so, he must first submit an approved scholarly work on "the lifeforce," which is a Meso-Paganist teaching that the sun, moon, and stars are connected with living organisms through energy. *Id.*

Though Nicholas's study may have started as a scientific endeavor, it ceased to be so and instead became a religious endeavor when he began to promote Meso-Paganist teachings through the Charged Universe Theory. This theory posits that an electrical interaction between the atmosphere and matter, including living organisms, is responsible for certain cosmological phenomena, rather than gravity. R. a 7. The theory is highly controversial; it is completely inconsistent with the scientific community. *Id.* Nicholas's theory is consistent, however, with his Meso-Paganist religion and its teachings on the lifeforce. R. at 57.

Now Nicholas, in his own words, is "strongly considering applying" to become a Sage at a Meso-Pagan seminary, using his research at Delmont to fulfill the scholarly work prerequisite. R. at 57. He has already obtained the application materials. *Id.* Furthermore, he has announced to the world via his social media that he is likely to become a Meso-Pagan Sage. *Id.* It has become clear to Delmont, to the scientific community and to the rest of the world—as it must be clear to this Court—that Nicholas's work has become devotional in nature, and Delmont's continued funding would violate the Establishment Clause.

2. Nicholas's Free Exercise Rights Are Not Implicated

This Court has not been asked to analyze whether the Free Exercise Clause has been violated. Accordingly, it should not consider that question since it was not raised for review.

The Fifteenth Circuit properly declined to consider that question. The District Court mistakenly engaged with it. Under *Locke*, which controls this case, excluding students from a scholarship because they are pursuing studies devotional in nature does not implicate their Free Exercise

rights. *Locke*, 540 U.S. at 716, 725. But the District Court held that *Locke* does not control because those students were pursuing vocational religious studies and Nicholas was pursuing studies that began as scientific and only later became religious. R. at 29. This is so narrow a reading of *Locke* as to choke it of its purpose. The scholarship in Locke did not just exclude vocational religious studies but also studies that were "devotional in nature or designed to induce religious faith." *Locke*, 540 U.S. at 716. In *Carson* the Court clarified that this includes scholarships "intended to be used 'to prepare for the ministry.'" *Carson*, 596 U.S. at 770 (emphasis added). Undoubtedly, this includes Nicholas's self-professed plans to become a Sage by submitting his Charged Universe Theory about the Meso-Pagan lifeforce.

Instead of applying *Locke*, the District Court relied on a line of three cases to suggest that the Free Exercise Clause might be implicated: *Trinity Lutheran*, *Espinoza*, and *Carson*. R. at 25–28. None of these cases apply.

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, a preschool was denied a grant from the State of Missouri because it was operated by a church. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 455 (2017). The Court held that "the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church" was a violation of the Free Exercise Clause. *Id*. at 467. This case is distinguishable from the present one. First, Trinity Lutheran is a religious institution operating a school for the benefit of children, whereas Nicholas is an individual conducting a study for his own benefit; it is not the Meso-Pagan church that is applying for a grant. Second, Missouri was awarding dozens of grants, whereas Delmont can only afford to award one single grant; it is not awarding grants to everyone except Nicholas because he is Meso-Pagan.

In *Espinoza v. Montana Dep't of Revenue*, a private religious school was denied a subsidy from the State of Montana for which all private, non-religious schools were eligible. *Espinoza*, 140 S. Ct. 2246 (2020). The Court held that once a state decided to subsidize private education, it could not then exclude private religious schools. *Id*. at 2262. This case is distinguishable from the present one. Montana's subsidies were awarded to parents, and those parents then chose which school would receive the funds. *Id*. at 2251. This extra step created a buffer between Montana and the religious schools, insulating the state from Establishment Clause concerns. In the present case, however, Delmont is funding Nicholas directly, in violation of the Establishment Clause.

In *Carson v. Makin*, religious schools were ineligible for a tuition assistance program because of the State of Maine's nonsectarian requirement. *Carson*, 596 U.S. at 771. The Court held that the nonsectarian requirement for otherwise generally available tuition assistance funds violated the Free Exercise Clause. This case is distinguishable from the present one. Maine's nonsectarian requirement singled out religious schools, whereas Delmont's grant requires that research be scientific rather than simply non-religious. More fundamentally, the Court in *Carson* took pains to note that *Locke* remained good law and that a state's interest preventing funds from being used to support religious leaders was a "historic and substantial state interest." *Id.* at 770.

The District Court's use of the *Trinity Lutheran*, *Espinoza*, *Carson* line of cases evinces a concern about religious equality, but that principle applies only "so long as the government does not fund the training of clergy." *Morris Cnty. Bd. of Chosen Freeholders v. Freedom From Religion Found.*, 139 S. Ct. 909, 910 (2019) (citing *Locke*, 540 U.S. at 721, 725). This case involves Delmont funding Nicholas's Meso-Pagan work, which means this line of cases does not apply. *Locke* controls.

B. Even if Delmont's Funding of Nicholas Does Not Violate the Establishment Clause, Delmont is Still Entitled to Substantial Deference in its Academic Decision Making

Even if the Court determines that Delmont's funding of Nicholas would not violate the Establishment Clause, Delmont is still entitled to substantial deference in its academic decision making. The Court has declined to "question the right of the University to make academic judgments as to how best to allocate scarce resources." *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). The Court has also acknowledged the importance of allowing a university to "determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Id.* Universities must balance these academic considerations with numerous others regarding funding, faculty, and public perception. Courts are in no position to make such complex decisions.

Delmont is all too familiar with the complications that can arise with funding, faculty, and public perception. Two years ago, the university offered a grant in the Anthropology Department only to have its recipient espouse dubious religious propositions. R. at 53. The academic community and financial donors questioned the quality and reputation of the entire department for allowing such wild conclusions to be published under the auspices of the University. *Id.* This incident remains an ongoing problem for Delmont to this day. *Id.*

Delmont cannot afford to have another grant-recipient promoting controversial religious propositions under its name. Already, members of the scientific community have become deeply troubled by Nicholas's sudden embrace of his fringe theory of the Charged Universe. R. at 8. Even scientists who have previously worked with Nicholas and published his work are comparing this new theory to the unfounded work of early alchemists who believed in a Philosopher's Stone that

granted immortality and tried to turn lead into gold. R. at 10. Forcing Delmont to continue funding Nicholas would cause irreparable harm to the institution. Delmont should be afforded the deference to make the decisions it must make to protect its reputation.

CONCLUSION

For the foregoing reasons, Delmont's condition on grant funding is not an unconstitutional condition and allowing Nicholas to publish his unprovable theories would violate the Establishment Clause. As a result, the judgment of the Fifteenth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

Team 30

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 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.

Statutes

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . . .

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 Respondent, 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 30

Counsel for Respondent