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 CERITORARI FROM THE UNITED STATES
COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 32
Counsel for Respondent
January 31, 2024

QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that a state's requirement for a grant recipient conform his research and conclusions to the academy's consensus view of what is scientific does not impose an unconstitutional condition on speech.

II. Whether the United States Court of Appeals for the Fifteenth Circuit erred in concluding that a state-funded research study violates 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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STATEMENT OF JURISDICTION

The Circuit Court for the Fifteenth Circuit entered final judgment in this matter on March 7, 2024. R. at 34. Cooper Nicholas timely filed a petition for a writ of certiorari, which this Court granted. R. at 59-60. This Court has jurisdiction to hear the case pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

A. Procedural History

On February 5, 2024, Dr. Cooper Nicholas ("Petitioner") sued Delmont and Delmont University ("Respondents") in Delmont District Court for placing an allegedly unconstitutional condition on his speech related to a scientific study of the Pixelian Comet. R. at 12. Delmont University contended that the condition was not unconstitutional, and that continuing to fund Dr. Nicholas's work would violate the Establishment Clause because of his intent and use of public funds to obtain a clerical position and advance central tenets of his faith. *Id*. On February 20, 2024, the District Court granted summary judgment to Dr. Nicholas on both issues. R. at 3. On March 7, 2024, the Fifteenth Circuit reversed the District Court, granting summary judgment to Delmont on both issues. R. at 34. This Court granted a writ of certiorari to resolve these Constitutional questions. R. at 60.

B. Statement of the Facts

The state of Delmont, through Delmont University, approved an Astrophysics Grant ("the Grant") to fund scientific study of the Pixelian Comet, a unique cosmic event that occurs every ninety-seven years. R. at 5. The Grant authorized funding of a visiting scholar's salary, use of university facilities and equipment, hiring of research assistants, and incidental costs associated with studying the Pixelian Comet ("the Visitorship"). *Id*. The Visitorship included access to the GeoPlanus Observatory, a state-funded celestial research station atop Mt. Delmont, "one of the

best locations for viewing celestial phenomena from the Northern Hemisphere." R. at 4. Delmont University hoped that the attention generated by the study of the Pixelian Event would lead to the GeoPlanus Observatory becoming one of the principal centers for astronomical study in the world. Seawall Aff. ¶ 4-5.

Per the Grant's terms, the visiting scholar was required to gather data and draw conclusions on the astronomical conditions and phenomena observed before, during, and after the Pixelian Event's occurrence. R. at 5. The visiting scholar's conclusions, and the raw data relied upon to reach those conclusions, would then be published by the University of Delmont Press. *Id*. The Grant required that any publication based on the study's findings conform with the academic community's consensus view of a scientific study. *Id*.

Delmont University awarded Dr. Cooper Nicholas with the Visitorship due to his eminence in the scientific community and reputation as being a prodigy in astronomical observation. *Id*. Dr. Nicholas accepted the terms of the Grant and used the funds to begin studying the celestial environment to establish baseline measurements before the Pixelian Comet's arrival. R. at 6. His baseline measurements were published in *Ad Astra*, a prestigious, peer-reviewed astrophysics journal, and generated significant buzz in the scientific community. *Id*. When the Pixelian Comet arrived in the Spring of 2023, Dr. Nicholas's team at the GeoPlanus Observatory carried out observations and collected data as it passed over the Northern Hemisphere. *Id*.

After the comet passed, Dr. Nicholas sought to publish his conclusions in *Ad Astra* once again. *Id*. His proposed article combined the standard, widely accepted data regarding the comet's travel with what he called a "historical dimension," or as Ad Astra put it, "unsupported analogies of the early alchemists." *Id;* R. at 8. He argued that certain electro-magnetic disturbances he observed were consistent with "cosmic changes" central to certain Meso-American indigenous

religious faiths. R. at 7. Further, he suggested that the Pixelian Event was consistent with the "Charged Universe Theory," a theory that charged particles, rather than gravity, explain cosmological phenomena. *Id*. He based these conclusions on ancient Meso-American cave hieroglyphs, which he has interpreted to depict the "same celestial array" as the Pixelian Event, as well as the "lifeforce" linking every living being together. *Id*. These theories represent Dr. Nicholas's personal beliefs and do not align with the academic community's consensus views on the origins of the cosmos, or the inspirations behind Meso-American cave art. *Id*.

Despite the editorial board's concerns with the non-empirical basis for some of Dr. Nicholas's conclusions, *Ad Astra* published the article. R. at 8. A note accompanying the article informed readers that some of Dr. Nicholas's conclusions were "in part based on foundational texts religious in nature" and resembled the "unsupported analogies of the early alchemists." R. at 10. Upon publication, the article received widespread criticism from the academic community and American media. R. at 9. Critics asserted that Delmont University and the GeoPlanus Observatory had become associated with a brand of promoting "weird science" due to Dr. Nicholas's Meso-Pagan conclusions and association with the school. *Id*.

Unbeknownst to the University, Dr. Nicholas had been intending the whole time to use the state-funded Visitorship as part of his application to become a Meso-Pagan Sage. Nicholas Aff. ¶ 13; Seawall Aff. ¶ 10. Sages are religious leaders in the Meso-Pagan faith. Nicholas Aff. ¶ 14. One must publish and defend a scholarly study on lifeforce or the Charged Universe Theory to become a Sage. *Id*. Dr. Nicholas was hopeful that his study, funded by the University and its grant, would "confirm his personal beliefs and theories" regarding Meso-Paganism. R. at 8.

Upon discovering Dr. Nicholas's true intentions for conducting the study and amidst concern that he had not complied with its methodological requirements, the University informed

Dr. Nicholas that he must "conform to the academic community's consensus view of a scientific study," or his funding would be terminated. R. at 10. Dr. Nicholas refused to comply with the University's requests, despite warnings that he may lose his funding, and contended that he had conducted a scientific study as required. R. at 11. The university and GeoPlanus Observatory announced that Dr. Nicholas had been terminated due to a fundamental disagreement over the meaning of science, and because they could not be seen as endorsing the tenets of his religion in a state-funded study. *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the Fifteenth Circuit's holding that Delmont University did not violate Petitioner's free speech rights by conditioning the Astrophysics Grant's funding on compliance with the academy's consensus approach to scientific study. Delmont University opened a limited public forum for Dr. Nicholas to publish his conclusions on the Pixelian Event, subject to reasonable, content-based restrictions in conformity with the academic community's consensus of a scientific study. Further, Dr. Nicholas's publication qualifies as government speech, allowing regulation of permissible viewpoints, because he was acting in his public capacity and his conclusions were associated as being the University's own. In any event, the Grant's condition satisfies strict scrutiny because it is narrowly tailored to accomplish Delmont's compelling interest in promoting scientifically based study of the Pixelian Event to prevent public confusion of science and religion. The Grant's condition does not operate as a penalty upon Petitioner, coerce him into accepting beliefs he disagrees with, or suppress his ideas, as he remained free to publish any of his non-conforming conclusions elsewhere.

This Court should affirm the Fifteenth Circuit's holding that Delmont University had an anti-Establishment interest in preventing Petitioner from using a state-funded grant to publicly

advance central tenets of Meso-Pagan faith and obtain a clerical position. History, tradition, and precedent show that state preference of Meso-Paganism over other beliefs as well as funding Dr. Nicholas's application to become a Sage is well understood to violate the Establishment Clause. In seeking to comply with the Establishment Clause, Delmont University did not overstep and violate Dr. Nicholas's free exercise rights, and therefore had a valid anti-Establishment interest. Delmont University is entitled to substantial deference on academic matters, including the direction of its research and management of its staff, if it does not intrude on Constitutionally protected grounds or use pernicious classifications, which it has not done here.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE FIFTEENTH CIRCUIT'S HOLDING THAT THE REQUIREMENT TO CONFORM GRANT-FUNDED STUDY OF THE PIXELIAN COMET TO THE ACADEMY'S CONSENSUS VIEW OF A SCIENTIFIC STUDY DOES NOT VIOLATE THE FIRST AMENDMENT.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. Amend. I. James Madison wrote that the First Amendment was intended to protect an individual's "natural rights, retained – as Speech, and Con[science]." Jud Campbell, Natural Rights and the First Amendment, Yale L. J. 246, 264 (2017) (quoting James Madison, Notes for Speech in Congress, (June 8, 1789)). The inherent right to express oneself is not boundless and therefore must be balanced against the government's legitimate interests in restricting expression at times. As Blackstone wrote, "every man, when he enters into society, gives up a part of his natural liberty." *Id.* at 273 In drafting the Constitution and Bill of Rights, the founders "widely agreed about the essence of the social contract – namely that the political society should protect natural liberty and should limit freedom only to promote the common good." *Id.* at 272.

This Court's free speech jurisprudence has marked the acceptable limits of government regulation over free expression. The government may not discriminate based on the viewpoint of an individual or group. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). The government may issue reasonable, content-based regulations over private speech in certain government-controlled forums that have been opened for limited parties and limited purposes. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (983). When the government itself is the speaker, individuals who are "charged by law with implementing" the government's message do not do so in their private capacity, so regulations on that speech do not normally implicate the First Amendment. *Shurtleff v. City of Boston*, 142 S.Ct. 1583, 1599 (2022) (Kavanaugh, J., concurring) (citing *Rust v. Sullivan*, 500 U.S. 173, 198-99 (1991)). The government may not coerce an individual to adopt a viewpoint with which they disagree; nor may they deny an otherwise available public benefit solely based on expression. *Regan v. Taxation with Reprentation*, 461 U.S. 540, 545 (1983). The Fifteenth Circuit was correct to hold that the government did not exceed these constitutional limits by restricting Petitioner's speech, and its decision should be affirmed.

A. The Astrophysics Grant created a limited public forum subject to reasonable, content-based regulations.

A limited public forum is one "which is not by tradition or designation a forum for public communication." *Perry,* 460 U.S. at 46 (1983). Traditional and designated public fora include parks, streets, town halls, and other venues "that ha[ve] been traditionally open to the public for expressive activity." *United States v. Kokinda*, 497 U.S. 720, 726 (1990). When the government creates a limited public forum, it is permitted to use content-based regulations to "reserv[e] it for the certain groups or for the discussion of certain topics," related to the legitimate purposes for which the forum was created. *Rosenberger v. Rector & Visitors of Univ. Of Va.*, 515 U.S. 819, 829 (1995). However, the government may not "impose restrictions that discriminate among

viewpoints on those subjects" allowed as it is "censorship in its purest form." *Perry*, 460 U.S. at 61-62 (1983).

1. Delmont University opened a limited public forum for Dr. Nicholas to present scientifically based conclusions about the Pixelian Event to promote the GeoPlanus Observatory as a preeminent voice in the scientific and astronomical community

In *Perry*, PEA, a teacher's union, had access to an interschool teacher mailing system while PLEA, a rival union, did not. 460 U.S. at 47 (1983). As a threshold matter, this Court found that the interschool teacher mailing system was a limited public forum because it was "not held open to the general public." *Id*. Instead, Indiana law mandated that the mailing system only be accessible by PEA, the teacher's union elected as the exclusive bargaining representative. *Id.* at 40. PLEA argued that their viewpoint on teacher labor relations was being discriminated against by only allowing PEA access to the mailing system. *Id*. at 49. This Court rejected that argument and found the mailing system's access policy was a permissible content-based restriction. *Id*. The policy granted access to PEA but not PLEA based on PEA's *status* as the exclusive bargaining agent under state law, not because of viewpoints either union held about labor relations. *Id.* (emphasis in original). The "touchstone" for reviewing content-based distinctions "is whether they are reasonable in light of the purpose which the forum serves." *Id.*

In *Rosenberger*, UVA established a limited public forum when it approved a student activity fund (SAF) that published student journals. 515 U.S. at 823 (1995). Access to the funds was contingent on a group's status as an approved "Contracted Independent Organization" (CIO). *Id*. Further, funds could only be approved for activities "related to the educational purpose of the University." *Id*. at 824. Wide Awake Productions (WAP) was an approved CIO but was denied funds due to a prohibition against funding "religious activity" that "primarily promotes or

manifests a particular belief in or about a deity or an ultimate reality." *Id*. at 825. This Court held the restriction to be impermissible viewpoint discrimination as it restricted specific viewpoints an organization may hold regarding the nature of the universe. *Id*.

Based on this Court's precedents, the state funded publication of Dr. Nicholas's research constitutes a limited public forum. Like the teacher's union in *Perry*, the State of Delmont approved Dr. Nicholas to be the sole, principal investigator of the Pixelian Event whose conclusions and supporting data would be published using the Grant's funding. 460 U.S. at 40 (1983). While the Visitorship position was advertised publicly and highly sought-after, only Dr. Nicholas was chosen to advance the state's goal of advancing science through study of the Pixelian Event. Delmont University created a limited public forum when it funded scientific study of the Pixelian Event and subsequent publication of its data and conclusions, and could therefore issue reasonable, content-based restrictions on Petitioner's use of funds. Just as the mailing system in *Perry* and student journals at UVA were opened by the government for limited expression by specific groups, Delmont opened the GeoPlanus Observatory for Dr. Nicholas to produce scientific conclusions about the Pixelian Event. *Id*.; *Rosenbeger*, 515 U.S. 819, 829 (1995).

2. A condition requiring Dr. Nicholas to conform his research methodology to the academic community's consensus view of a scientific study is a reasonable, content-based regulation.

Considering Delmont's goal of advancing scientific knowledge of the Pixelian Event and preventing public confusion between science and religion, Respondent's exclusion of Petitioner from continued funding was reasonable when he refused to adhere to the requirement to conform to the academic community's consensus view of a scientific study. Petitioner contends that Respondents unconstitutionally discriminated against his viewpoint of what science is and what it stands for. R. at 10. However, science is an objective, methodological set of principles and

standards by which research can be judged by, not a viewpoint. Our nation's history, and this Court's precedents, reflect this understanding of science as an objective standard which the government has legitimate interests in regulating and advancing.

The Constitution affirms the government's interest in advancing scientific research. *See e.g.,* U.S. Const. Art. I § 8 Cl. 8 (granting patent rights to inventors "[t]o promote the progress of science . . ."). This Court has rarely addressed the meaning of "science", but in *Daubert v. Merrell Dow Pharms., Inc.*, it considered the standards by which a judge can assess if an expert's testimony qualifies as "scientific knowledge" under the Federal Rules of Evidence. 509 U.S. 579, 593 (1993). This Court found that a determinative factor in assessing scientific knowledge is whether the knowledge can be tested. *Id*. "The criterion of the scientific *status* of a theory is its falsifiability, or refutability, or testability." *Id. (*quoting Karl Popper, Conjectures and Refutations: The Growth of Scientific Knowledge 37 (5th ed. 1989) (emphasis added)). Popper's scientific philosophy of falsifiability posits that, "scientific statements can never be shown conclusively to be true but can sometimes be shown conclusively to be false." Susan Haack, Trial and Error: The Supreme Court's Philosophy of Science, Am. J. Pub. Health 95, no. 1 (2005). At its core, the scientific method is an inductive methodology of empirical reasoning, requiring observation, collection of data, and extrapolation of that data to arrive at a conclusion.

By conditioning continued funding on Petitioner's compliance with the academic community's consensus view of a scientific study, Respondent was acting to preserve its forum "for the discussion of certain topics," i.e., research with a methodologically scientific basis. *Rosenberger,* 515 U.S. at 829 (1995). Petitioner's second article in *Ad Astra* failed to comply with this content-based regulation because his conclusions could not be "falsifi[ed], or refut[ed], or test[ed]," and were therefore not scientific knowledge. *Daubert*, 509 U.S. at 593 (1993). For

instance, Petitioner interpreted Meso-American cave hieroglyphs to represent "primitive depictions of the [Pixelian Event]." R. at 7. Petitioner's interpretation of the ancient hieroglyphics is completely subjective and cannot be definitively tested or refuted. His subjective beliefs were "in part based on foundational texts religious in nature, not empirical." R. at 10. By relying on non-empirical sources of data outside of the Pixelian Event's occurrence, Petitioner could not comply with the Grant's requirement to publish an article that "include[s] the raw data upon which conclusions were reached," because much of it was subjective. R. at 2.

Just as PEA's access to the mailing system in *Perry* was dependent upon their status as the designated bargaining representative, continued funding of Petitioner's research was dependent upon its status as an empirical, scientific endeavor. *Perry*, 460 U.S. at 49 (1983); *cf. Daubert*, 509 U.S. at 593 (1993). Unlike the viewpoint-based restriction in *Rosenberger* that prohibited funding "religious activity" that "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality," the Grant's condition took no position on the acceptability of Petitioner's viewpoints on lifeforce or the Charged Universe Theory, only the method by which they were reached using state funds. 515 U.S. at 825 (1995). Irrespective of Petitioner's conclusions on lifeforce and the Charged Universe Theory, Respondents were justified to cut off funding when the methodological content of the study ceased to be scientific in nature by relying on subjective beliefs and non-empirical sources of information. Drawing distinctions between scientific and non-scientific content is a reasonable, historically based governmental practice that Respondents constitutionally engaged in.

B. Even if the Astrophysics Grant's condition distinguished based on viewpoint rather than content, government speech is not required to maintain viewpoint neutrality.

The district court incorrectly concluded that the Grant was not "designed to convey a governmental message, but rather to facilitate private unfettered scientific speech." R. at 21. The

First Amendment does not require the government to maintain viewpoint neutrality when its own officers and employees speak on a subject. *Matal v. Tam*, 582 U.S. 218, 233 (2017). If subjected to First Amendment scrutiny of its own speech, "it is not easy to imagine how government could function." *Pleasant Grove City v. Summum*, 555 U.S. 460, 468 (2009); *see also Johanns v. Livestock Marketing Assn*., 544 U.S. 550, 553 (2005). By its own terms, the Grant did not permit "unfettered" speech by Petitioner. R. at 10 (requiring conformity with the academy's consensus view of a scientific study). As such, the government-speech doctrine is the appropriate lens to view Respondent and Petitioner's relationship through.

This Court's recent decision in *Shurtleff*, 142 S.Ct. 1583 (2022), is instructive of how to distinguish government speech from private speech. The city of Boston opened City Hall Plaza as a public forum for events. *Id*. at 1588. There, groups could raise a flag of their choosing on a flagpole, replacing the City of Boston flag for the duration of a gathering. *Id*. The city had never refused a request before 2017, when it denied a request to raise a Christian Flag during an event commemorating the Christian community. *Id.* The District Court and First Circuit found that by raising the flag, Boston was engaging in government speech and could refuse flags based on viewpoint. *Id*. at 1589. In a 6-3 decision, this Court reversed and held that the flag raising was private speech, and that viewpoint discrimination was impermissible. *Id*. at 1593.

The *Shurtleff* Court applied a three-part test to determine if a medium of expression constitutes government speech, by analyzing whether it is (1) traditionally used by government to convey a state message; (2) often closely identified in the public mind as government controlled; and (3) intended to convey a governmental message. *Id.*; s*ee also Summum*, 555 U.S. at 472 (2009) (finding park monuments to be government speech); *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 213 (finding license plates to be government speech); *Matal*, 582

U.S. at 233 (2017) (finding patents to be private speech). The Court found the first two conditions to favor Boston, as flag-raising on government property has traditionally conveyed the city's own messages and can often be associated as doing so in the public's mind. *Id*. at 1591. But on the third condition, it found that Boston did not intend to convey a governmental message in its practice of allowing any group, besides Christians, to raise a flag. *Id.* at 1592 (questioning how raising a "Metro Credit Union flag," among many others, represents Boston's intended message). In this case, Petitioner's research and conclusions qualify as government speech under *Shurtleff's* test.

First, government-funded scientific studies have a long history of conveying government messages. In *Rust,* 500 U.S. at 193 (1991), this Court held that the government may choose to "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." *See also Matal,* 582 U.S. at 235 ("[w]hen a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others"). From the Manhattan Project to vaccines for Polio, Measles, and COVID-19 and even exploratory missions to Mars, the government has worked together with scientists, universities, and private organizations to fund scientific study with specific goals and purposes in mind, many of which required the government to use and regulate speech to achieve. *See e.g.,* Oona Hathaway, Secrecy's End, 106 Minn. L. Rev. 691, 712-14 (describing government regulation of scientific publication during World War II); 42 U.S.C. 1861 *et seq.* (establishing the National Science Foundation and advancing "a national policy for the promotion of basic research and education in the sciences"). Here too, Respondents believed a scientific study of the Pixelian Event was in the public interest to promote accurate, scientific research of cosmological phenomena. Seawall Aff. ¶ 6; R. at 11.

Second, the widespread attention generated by the University during the Pixelian Event has led the public to associate Delmont University and the GeoPlanus Observatory with Petitioner's conclusions. Delmont University and the GeoPlanus Observatory received worldwide attention as the "headquarters" for scientific study of the Pixelian Event and attracted the largest watch parties in the Northern Hemisphere. R. at 6. Late night shows mocked the University and Observatory for "becoming associated with "weird science,"" after Petitioner's second article was published. R. at 9. The District Court's reliance on *Rosenberger* to conclude that Petitioner was "wholly independent" from the university, just as student CIOs were, is wholly inaccurate. R. at 22. UVA approved dozens of CIOs, each with their own unique purpose and beliefs. *Rosenberger,* 515 U.S. at 823 (1995). Just as the government is not ordinarily associated with the message behind every registered trademark, *Matal*, 582 U.S. at 236 (2017) (finding the government approves "a vast array" of trademarks "expressing contradictory views"), it was clear that UVA did not adopt the beliefs of every student organization on its campus. *Rosenberger,* 515 U.S. at 823 (1995). Here, though, the University did not fund multiple, competing studies that may express contradictory views. *Matal*, 582 U.S. at 236 (2017). Therefore, it is reasonable to conclude the public associated the published position to be the University's own. As the Fifteenth Circuit aptly concluded, Petitioner was the University's sole "spokesperson for all conclusions and publications related to the Pixelian Event," and as such, the public attributed Petitioner's conclusions to Respondent. R. at 43.

Third, it is clear Respondents intended for the research study to convey two governmental messages: promoting scientifically based research of the Pixelian Event to demonstrate the GeoPlanus Observatory's status as a globally premier institute for astronomical study. Unlike trademarks in *Matal*, attributing the study's conclusions to Respondents makes sense as there are

no other state-funded studies "expressing contradictory views." 582 U.S. at 236 (2017). Petitioner "voluntarily" accepted the "quasi-public" position created by Respondents, and therefore acted as the government's agent and not a private speaker. *Shurtleff,* 142 S.Ct. at 1600 (Kavanaugh, J., concurring). As the Grant-funded study qualifies as government speech, it was constitutional for Respondents to limit Petitioner's conclusions to those conforming to the academic community's consensus scientific methodology.

C. The Astrophysics Grant's condition satisfies strict scrutiny because it is narrowly tailored to advance Delmont's compelling interest promoting scientifically based study of the Pixelian Event

In any event, the Grant's condition still satisfies strict scrutiny because it is justified by a compelling government interest and narrowly tailored to ensure that there is no more infringement than necessary to achieve that interest. *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 799 (2011). This Court has not often provided definitive guidelines for when a state's interest can be considered compelling, but the government's asserted goal may not be "couched in very broad terms," *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014), and must be "of the highest order." *Wis. v. Yoder,* 406 U.S. 205, 215 (1972). Regulations must be narrowly tailored to avoid both underinclusiveness and overinclusiveness. "Underinclusiveness can raise "doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint."" *Williams-Yulee v. Fla. Bar,* 577 U.S. 433, 448 (2015) (quoting *Brown,* 564 U.S. at 787 (2011)). On the other hand, overinclusiveness raises concerns that the government is "burden[ing] substantially more speech than is necessary to further the government's legitimate interests." *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1968).

As previously discussed, the Constitution, this Court's precedents, and our history as a nation reflect that the government's interest in advancing science is "of the highest order." *Yoder*,

406 U.S. at 215 (1972); *see e.g.,* U.S. Const. Art. I § 8 Cl. 8 (patent clause). Respondents' interest is not "couched in very broad terms," as it applies only to producing scientifically based research related to the Pixelian Event before, during, and after its occurrence. *Hobby Lobby,* 573 U.S. at 726 (2014) (finding "public health" and "gender equality" to be too broad to justify a regulation mandating for-profit religious organizations to provide employees access to contraceptives against their beliefs). As Respondents repeatedly told Petitioner, he remained free to publish his non-empirical conclusions in any other forum besides the state funded Grant. R. at 10

The District Court concluded that the Grant's condition failed strict scrutiny because it was both underinclusive and overinclusive at achieving the government's stated goal. R. at 16. Petitioner claims, and the District Court found, that the regulation is underinclusive because the University had allowed other scientists to reference and rely upon the writings of Greek, Roman, Inca, and Phoenician Pagans, and was therefore singling out his reliance on Meso-Pagan art. R. at 10; 16. The District Court found the regulation to be overinclusive because it "broadly exclud[ed] any views that do not comport with the academy's consensus view as to what is "scientific."" R. at 16. These conclusions are both unsupported by the record, and this Court should affirm the Fifteenth Circuit's holding that the condition satisfies strict scrutiny.

First, Petitioner's funding was cut off not because of his reliance on Meso-Pagan works, but because by doing so he had failed to comply with the academic community's consensus view of a scientific study. Petitioner could have relied upon any number of other, non-empirical sources of information besides Meso-Paganism to make scientifically unsupported conclusions and the University would still have cut off his funding. Second, Petitioner's failure to elaborate upon the other contexts in which University scientists had referenced and relied upon pagan writings prevents accurate judicial review of the University's motivations in those contexts as compared to

here. R. at 10. Without knowing more about the University's funding of these other scientists, the purpose of their studies, and the goals of the University as it relates to those studies, this Court should not conclude that the regulation is underinclusive and was intended to disfavor "a particular speaker or viewpoint." *Williams-Yulee*, 577 U.S. at 448 (2015).

Similarly, the condition is not overinclusive because it burdened only one person's speech:Petitioner's, who was acting in a public capacity, not private. Unlike in *Brown*, where California sought to restrict *all* minors' access to violent video games despite many parents' acceptance or indifference to them, Respondents could not narrow their tailoring any further. 564 U.S. at 804 (2011). Further, Respondents repeatedly communicated to Petitioner that he would remain free to publish his subjective interpretations of the Pixelian Comet data as it relates to Meso-Paganism in any other venue of his choosing, just not in the one the government had chosen to advance its program. R. at 10; s*ee also Rust*, 500 U.S. at 193 (1991). The record shows that the regulation is narrowly-tailored to advance Respondents' compelling interest in preventing public confusion between science and religion.

D. The Astrophysics Grant's condition is not coercive, nor does it operate as a penalty aimed at suppressing Dr. Nicholas's ideas.

As James Madison wrote in 1789, the First Amendment is intended to protect both "speech and con[science]." *See* Campbell, *supra*, at 264. The government may not coerce an individual to endorse a belief that they do not hold through compelled speech. *See W. Va. State Bd. of Educ v. Barnette*, 319 U.S. 624, 642 (1943). This Court's precedents show that "the opportunity to think for ourselves and to express those thoughts freely is among our most cherished liberties and part of what keeps our Republic strong." *303 Creative LLC v. Elenis,* 143 S.Ct. 2298, 2321 (2023). Similarly, the government may not suppress an individual's ideas for being dangerous or unaligned with its own views, nor may it penalize speech by denying an individual access to an otherwise

available government benefit. *American Communications Ass'n v. Douds*, 339 U.S. 382, 402 (1950); *Speiser v. Randall*, 357 U.S. 513, 518 (1958); *Regan*, 461 U.S. at 545 (1983).

None of these concerns are at issue in the current case. First, Petitioner was not being coerced to accept a belief that he did not hold. Unlike the impressionable school children in *Barnette*, where attendance was compulsory and compliance with the flag salute required, Petitioner accepted the Grant voluntarily, which he knew to be conditioned on compliance with the academic community's consensus view of a scientific study. R. at 6; 319 U.S. at 641 (1943). In *Douds*, the government passed a regulation preventing a union from holding a representative election. 339 U.S. at 402 (1950). Unlike that union whose *only* avenue of speech aimed at accomplishing their goals was suppressed, Petitioner "remain[ed] free to say whatever he wanted" about the Charged Universe theory in contexts other than the state funded study. R. at 10; *Rust*, 500 U.S. at 183.

II. THIS COURT SHOULD AFFIRM THE FIFTEENTH CIRCUIT'S HOLDING THAT DELMONT UNIVERSITY HAD AN ANTI-ESTABLISHMENT INTEREST IN PREVENTING PETITIONER FROM USING A STATE-FUNDED GRANT TO PUBLICLY ADVANCE CENTRAL TENETS OF MESO-PAGAN FAITH AND OBTAIN A CLERICAL POSITION WITHIN THAT RELIGION.

The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. Const. Amend. I. This provision was included to create a "wall of separation between [c]hurch and [s]tate." Thomas Jefferson, Letter to Danbury Baptist Association (Jan. 1, 1802). It prevents both the establishment of favored state religions as well as the targeting of minority, disfavored religions. The prevention of government Establishment and the individual right to free exercise go hand-in-hand, as Justice Gorsuch wrote in *Kennedy*, "[a] natural reading of [the First Amendment] would seem to suggest the Clauses have "complementary" purposes." *Kennedy v. Bremerton Sch. Dist.,* 142 S.Ct. 2407,

2427 (2022). This Court interprets the boundaries set by the Establishment Clause "by reference to historical practices and understandings." *Id.*; *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014). History, tradition, and this Court's precedents make clear that Delmont had a valid anti-Establishment interest when it came to understand it was funding Petitioner's religious endeavor of becoming a Meso-Pagan Sage and promoting the central tenets of his faith through a state-funded scientific study.

A. History, tradition, and precedent show that state-funded clerical studies and official preference of one religion over others violate the Establishment Clause.

"The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U. S. 228, 244 (1982). Writing in concurrence of the judgment in *Shurtleff*, Justice Gorsuch identified the provision of preferential financial support for one religion over others as a hallmark sign of impermissible Establishment. 142 S.Ct. at 1609 (2022) (Gorsuch, J., concurring in judgment) (citing M. McConnell, Establishment and Disestablishment at the Founding, Part I: Establisment of Religion, 44 Wm. & Mary L. Rev. 2105, 2131-81 (2003)). Delmont University had a valid anti-Establishment interest because publication of Dr. Nicholas's article amounted to the provision of preferential financial support for Meso-Paganism as he was promoting the central tenets of his faith and seeking to join its clergy through state funds. This historical understanding shows why this Court should affirm the Fifteenth Circuit's decision.

1. Dr. Nicholas advanced the central tenets of his Meso-Pagan faith while acting in his public capacity, violating the Establishment Clause.

This Court's Establishment Clause cases have distinguished between religious speech in an individual's public and private capacities. "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing

religion, which the Free Speech and Free Exercise Clauses protect." *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990). The government is not considered to be advancing the tenets of a faith or providing preferential support if its officers are acting in their private capacities.

In *Santa Fe Independent School District v. Doe*, this Court struck down a school policy of beginning football games with a prayer led by a student body representative under the Establishment Clause. 530 U.S. 290, 301 (2000) The Court concluded that the student-led prayer was government speech because it took place on school property and was broadcast over a school-owned loudspeaker controlled by school officials. *Id*. In *Lee v. Weisman*, this Court found that a clerical member reciting prayers at a graduation ceremony was coercive, government speech violative of the Establishment Clause because student attendance was compulsory. 505 U.S. 577, 580 (1992).

In *Kennedy*, a high school football coach was placed on administrative leave following a series of post-game, solitary prayers at the midfield line. 142 S.Ct. at 2415 (2022). The School District believed that Coach Kennedy was engaged in religious exercise "while still on duty as an assistant coach," and that they had an anti-Establishment interest in preventing a "reasonable observer" from perceiving the district as endorsing his religion. *Id*. at 2419. This Court rejected that conclusion because Mr. Kennedy was acting in his private capacity when he took a moment of prayer and reflection after football games. *Id*. As the Court saw it, the School District's standard for judging Establishment Clause violations would lead to "preference [of] secular activity" and be "hostile to religion," by ignoring the First Amendment's double protection for free speech and religious expression. *Id*. at 2431. Unlike in *Santa Fe* and *Lee*, the Court found no evidence of coercion through Mr. Kennedy's solitary act of prayer because he had not asked students to join

him and had complied with the school's request to wait until athletes and others were occupied elsewhere. *Id.*

This case is distinguishable from *Kennedy* because Petitioner acted in his public, not private, capacity by advancing central tenets of his religious beliefs through a state funded study. *Id*. Like the school in *Santa Fe*, Petitioner utilized public resources such as the GeoPlanus Observatory, research assistants, and lab equipment to deliver his conclusions that promoted the central tenets of his religious beliefs. 530 U.S. at 301 (2000); R. at 6-10. While nobody is being coerced into reading Petitioner's report in *Ad Astra*, as students were compelled to attend the graduation ceremony in *Lee*, the public attention surrounding the Pixelian Event and the University make it likely that impressionable minds will learn of the state's endorsement of the Charged Universe Theory and lifeforce. R. at 6-10; 505 U.S. at 580 (1992).

The facts of this case more closely mirror the situation in *Edwards v. Aguillard*, 482 U.S. 578, 593 (1987), where this Court struck down under the Establishment Clause a Louisiana law mandating that creationism be taught alongside evolution. The Court found that the primary purpose of the Creationism Act was to promote a "particular religious viewpoint" as a "true scientific theory. *Id.* at 593, 595. While decided under the *Lemon* "secular purpose" test, which this court "abandoned" long ago due to its ahistorical approach and tendency to produce inconsistent results, the *Edwards* decision still comports with a historical understanding of the Establishment Clause's prohibition against preferential financial support for a particular religious group. *Id.*; *Kennedy*, 142 S.Ct. at 2414. s*ee* McConnell, *supra* at 2131-81. "There is and can be no doubt that the First Amendment does not permit the state to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma." *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968). By using the Astrophysics Grant to advance central tenets of

his religion, that the Charged Universe Theory and lifeforce are scientifically based and connected to his interpretations of Meso-American cave paintings, Petitioner violated the Establishment Clause by "seek[ing] to employ the symbolic and financial support of government to achieve a religious purpose." *Edwards*, 482 U.S. 578, 597 (1987).

2. Under Locke v. Davey, Dr. Nicholas's intent to use state funds to pursue a clerical position in the Meso-Pagan faith violates the Establishment Clause.

In *Locke v. Davey*, 540 U.S. 712 (2004), this Court upheld a Washington state law prohibiting certain educational assistance grants from being used in the pursuit of a theology degree. The Court analyzed the historical landscape and concluded that early practice and understanding of anti-Establishment precluded the use of public funds to support clerical members in all forms. *Id*. at 723 (surveying early state Constitutional provisions).

The record is undisputed that Sages are a clerical position in the Meso-Pagan faith. R. at 47. However, the District Court found that Respondents' concern about Petitioner's intent to use the Grant funded study to become a Sage was "too attenuated" to raise a valid anti-Establishment concern because it was "hypothetical" and "down the line." R. at 29. The record does not reflect such a conclusion. Respondents learned of Petitioner's intent to use the study as part of his Sage application through a social media post, which according to Petitioner's own sworn testimony, is a required step in the application process. Seawall Aff. ¶ 10; Nicholas Aff. ¶ 14. Petitioner has repeatedly affirmed that Meso-Paganism is his true calling and what has inspired him to pursue astrophysics, and in part he hoped to "confirm his personal beliefs" about Meso-Paganism through the study. Nicholas Aff. ¶ 6, 9; R. at 8.

B. The Astrophysics Grant is not a generally available public benefit that was denied to Petitioner because of his religious beliefs.

The District Court relied on a recent line of cases including *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020), and *Carson v. Makin*, 142 S.Ct. 1987 (2022) to conclude that Petitioner was denied a generally available public benefit because of his beliefs in Meso-Paganism and the Charged Universe Theory. R. at 25-28. As the District Court saw it, in their attempt to comply with the Establishment Clause, Respondents had violated Petitioner's free exercise rights. *Id.* at 25. The Court's conclusion in reliance on these cases is misguided because the Grant was not a publicly available benefit, and it was not denied to Petitioner on account of his religious beliefs.

Beginning with *Everson v. Bd. of Educ. of Ewing*, this Court has consistently recognized that the Establishment Clause is not violated when religious organizations receive funding from generally available, neutral government programs. 330 U.S. 1 (1947). In *Trinity Lutheran*, Missouri offered grants to purchase recycled tires for playground surfacing to all schools except those operated by religious organizations. 582 U.S. at 454 (2017). In *Espinoza*, Montana created a tuition assistance program for all parents who choose to send their children to private schools besides those "owned or controlled in whole or in part by any church, religious sect, or denomination." 140 S.Ct. at 2252 (2020). In *Carson*, Maine enacted a tuition assistance program for all parents who lived in school districts without secondary schools that could not be put towards otherwise eligible religious schools. 142 S.Ct. at 1994 (2022). This court struck down each of these programs for violating Free Exercise by denying a generally available public benefit to otherwise eligible recipients on account of their religious status. By contrast, the Astrophysics Grant was selectively awarded to *one* individual among many who may have possessed similar criteria, such as eminence in the field of astrophysics. R. at 5.

Even if the Grant's condition is a generally available public benefit, it was not denied to Petitioner based on his religious beliefs. The government may not discriminate against religion on its face or if the purpose is to suppress religious exercise. *See Employment. Div. v. Smith*, 494 U.S. 872, 878 (1990); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993). Here, the Grant's condition is facially neutral to religion, only requiring the recipient to conform to the academic community's consensus view of a scientific study. *Contra e.g., Trinity Lutheran*, 582 U.S. 449, 454 (2017) (explicitly excluding religious organizations from receipt of scrap tire grant). The choice to fund Petitioner's study and to later revoke that funding was based upon his compliance with an approved scientific methodology, i.e., that he must arrive at well-reasoned conclusions based on observation and data subjectable to testing by others, not upon publication of a study with no religious implications. R. at 10; s*ee also supra* Part I.A.2. This Court should affirm that Respondents did not suppress Petitioner's free exercise in their attempt to comply with the Establishment Clause, and their anti-Establishment interest is therefore valid.

C. Under *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, Delmont University remains entitled to substantial deference on academic matters.

In *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll*., 143 S.Ct. 2141 (2023), this Court struck down Affirmative Action programs for utilizing racial classifications "too pernicious to permit" anywhere but in the most demanding and exacting circumstances. The Court retreated from *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003), which had permitted universities deference on their educational judgment to prioritize diversity in admissions through Affirmative Action programs. The Court held that universities were not entitled to deference when they used racial classifications to alleviate "past societal discrimination" and promote diversity as it is contrary to the Fourteenth Amendment's "central command" of equality. *Students for Fair Admissions, Inc.*, 143 S.Ct. at 2174.; *Richmond v. J. A.*

Croson Co., 488 U.S. 469, 511 (1989). The command of equality protects discrimination based on "racial, religious, sexual, or national class." *Students for Fair Admissions, Inc.*, 143 S.Ct. at 2172 (2023). As such, any deference must "exist within constitutionally prescribed limits," and the strictest scrutiny is appropriate when a university uses pernicious classifications. *Id.* at 2168.

Respondents were justified in conditioning Petitioner's funding on compliance with the academic community's consensus view of a scientific study and should be afforded substantial deference in their judgment that he had failed to comply as such. It is "the right of the University to make academic judgments as to how best to allocate scarce resources." *Widmar v. Vincent*, 453 U.S. 263, 276 (1981). As previously discussed, the Grant's condition was facially neutral towards religion and within the University's discretion to define the "academic community's consensus view of a scientific study." R. at 10. The public outcry combined with the University's past experiences and knowledge of related incidents leading to the entwining of religion and science more than justified their decision to cut off Petitioner's funding. As it was a purely academic decision not based on a pernicious classification due to his Meso-Pagan beliefs, the University's decision should be granted deference.

CONCLUSION

For the foregoing reasons, we respectfully request that this Court affirm the decision of the Fifteenth Circuit.

Respectfully submitted,

/s/ Team 32

APPENDIX

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.

U.S. Const. Art. I § 8 Cl. 8.

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries

Statutory Provisions

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; . . .

42 U.S.C. 1861

There is established in the executive branch of the Government an independent agency to be known as the National Science Foundation ("hereinafter referred to as the "Foundation"). The Foundation shall consist of a National Science Board (hereinafter referred to as the "Board") and a Director.

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for the Petitioner, furnishes the following in compliance with the applicable rules:

We hereby certify that the work product contained in all copies of Team 32's brief is in fact the work product of Team 32's team members.

We hereby certify that Team 32 complied fully with their law school's governing honor code.

We hereby certify that this brief conforms to the Competition Rules.

Signed,

/s/ Team 32