No. 23-CV-1981

In The
Supreme Court of the United States

COOPER NICHOLAS,

Petitioner,

v.

STATE OF DELMONT and DELMONT UNIVERSITY,

Respondents.

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

BRIEF FOR PETITIONER

TEAM 003
Counsel for Petitioner

QUESTIONS PRESENTED

1. Does a state's requirement that a grant recipient conform his research and conclusions to the academy's consensus view of what is scientific impose an unconstitutional condition on speech?
2. 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?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

I. THE ASTROPHYSICS GRANT'S REQUIREMENT IS AN UNCONSTITUTIONAL CONDITION THAT VIOLATES THE FIRST AMENDMENT 5

A. The grant's condition is viewpoint discriminatory 5

B. Even if this Court finds that the condition is not viewpoint discriminatory, it is still content discriminatory 7

C. Respondents fail to satisfy strict scrutiny 8

D. The condition leverages Dr. Nicholas's grant benefits to suppress his right to free speech 11

E. The government speech doctrine is inapplicable because the grant's condition targets and restricts private speech. 13

F. Respondents' actions offend First Amendment foundational principles 15

II. THE STATE-FUNDED ASTROPHYSICS GRANT WOULD NOT VIOLATE THE ESTABLISHMENT CLAUSE 16

A. The Astrophysics Grant is a neutral government program.....17

B. Any public funds or benefit flowing to religion would only be through Dr. Nicholas's independent choices 19

CONCLUSION 24

APPENDIX A.....25

CERTIFICATE OF COMPLIANCE.....26

TABLE OF AUTHORITIES

CASES

44 Liquormart, Inc. v. Rhode Island,
517 U.S. 484 (1996) 9

Abrams v. United States,
250 U.S. 616 (1919) 15

Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,
570 U.S. 205 (2013) 11, 12

Bd. of Educ. v. Allen,
392 U.S. 236 (1968) 19

Brandenburg v. Ohio,
395 U.S. 444 (1969) 15

Brown v. Ent. Merchs. Ass'n,
564 U.S. 786 (2011) 7, 8

Capitol Square Rev. & Advisory Bd. v. Pinette,
515 U.S. 753 (1995) 17, 23

Carson v. Makin,
596 U.S. 767 (2022) 17, 19, 20, 21, 22, 23

Chaplinsky v. New Hampshire,
315 U.S. 568 (1942) 9

City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC,
596 U.S. 61 (2022) 7

Cohen v. California,
403 U.S. 15 (1971) 10, 15

Connick v. Myers,
461 U.S. 138 (1983) 13

Espinoza v. Mont. Dep't of Revenue,
140 S. Ct. 2246 (2020) 17, 18, 19, 22, 24

Everson v. Bd. of Educ.,
330 U.S. 1 (1947) 18

FCC v. League of Women Voters of Ca.,
468 U.S 364 (1984) 11

Fla. Star v. B.J.F.,
491 U.S. 524 (1989) 9

Grutter v. Bollinger,
539 U.S. 306 (2003) 23

Healy v. James,
408 U.S. 169 (1972) 12

Kennedy v. Bremerton Sch. Dist.,
597 U.S. 507 (2022) 16, 22, 24

Keyishian v. Bd. of Regents,
385 U.S. 589 (1967) 9

Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.,
508 U.S. 384 (1993) 8

Legal Servs. Corp. v. Velazquez,
531 U.S. 533 (2001) 11, 13

Locke v. Davey,
540 U.S. 712 (2004) 21

Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n,
584 U.S. 617 (2018) 23

Matal v. Tam,
582 U.S. 218 (2017) 6

Mitchell v. Helms,
530 U.S. 793 (2000) 19

Morse v. Frederick,
551 U.S. 393 (2007) 9

Mueller v. Allen,
463 U.S. 388 (1983) 19

N.Y. Times Co. v. Sullivan,
376 U.S. 254 (1964) 9

Nat'l Inst. of Fam. & Life Advocs. v. Becerra,
583 U.S. 1165 (2018) 10

New York v. Ferber,
458 U.S. 747 (1982) 9

Perry v. Sindermann,
408 U.S. 593 (1972) 11

Pickering v. Bd. of Educ.,
391 U.S. 563 (1968) 13

Police Dep't of Chicago v. Mosley,
408 U.S. 92 (1972) 5

PruneYard Shopping Ctr. v. Robins,
447 U.S. 74 (2018) 10

R.A.V. v. City of St. Paul,
505 U.S. 377 (1992) 6, 7, 9, 10

Rankin v. McPherson,
483 U.S. 378 (1987) 13

Reed v. Town of Gilbert,
576 U.S. 155 (2015) 7, 8, 10, 11

Regan v. Tax'n With Representation of Wa.,
461 U.S. 540 (1983) 11, 12

Rosenberger v. Rector & Visitors of the Univ. of Va.,
515 U.S. 819 (1995) 5, 6, 13, 14

Rust v. Sullivan,
500 U.S. 173 (1990) 11

S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.,
483 U.S. 522 (1987) 14

Snepp v. United States,
444 U.S. 507 (1980) 9

Speiser v. Randall,
357 U.S. 513 (1958) 5, 12

Stanley v. Georgia,
394 U.S. 557 (1969) 9

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,
600 U.S. 181 (2023) 23

Town of Greece v. Galloway,
572 U.S. 565 (2014) 16

Trinity Lutheran Church of Columbia, Inc. v. Comer,
582 U.S. 449 (2017) 19, 21, 22

United States. v. Am. Libr. Ass'n,
539 U.S. 194 (2003) 11

United States. v. Playboy Ent. Grp., Inc.,
529 U.S. 803 (2000) 9

United States v. Stevens,
559 U.S. 460 (2010) 10

Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council,
420 U.S. 971 (1975) 9

Witters v. Wa. Dep't of Servs. for the Blind,
474 U.S. 481 (1986) 20

Walker v. Tex. Div., Sons of Confederate Veterans, Inc.,
576 U.S 200 (2015) 14

Walz v. Tax Comm'n,
397 U.S. 664 (1970) 19

Widmar v. Vincent,
454 U.S. 263 (1995) 23

Wooley v. Maynard,
430 U.S. 705 (1977) 10

Zelman v. Simmons-Harris,
536 U.S. 639 (2002) 18, 19, 20, 21

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I 16

SECONDARY AUTHORITIES

Black's Law Dictionary (11th ed. 2019) 21

Manuela F. Pinto, *Open Science for Private Interests? How the Logic of Open Science Contributes to the Commercialization of Research*,
Frontiers Rsch. Metrics & Analytics, Nov. 2020 14

Mario Livio, *Galileo and the Science Deniers* (2020) 15

Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105 (2003) 24

Thomas S. Kuhn, *The Structure of Scientific Revolutions* (1962) 15, 16

OPINIONS BELOW

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-CV-1981 (15th Cir. Mar. 7, 2024).

JURISDICTION

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

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution is relevant to this appeal and is reprinted in Appendix A.

STATEMENT OF THE CASE

Petitioner, Dr. Cooper Nicholas ("Dr. Nicholas"), is a thirty-three-year-old native of Delmont and expert astrophysicist. R. at 2. Dr. Nicholas, being widely known in the field and a Wunderkind with intuitive observations, was selected from an overwhelming number of applications for the Visitorship in Astrophysics program ("Visitorship"). R. at 53.

The Visitorship was established by the State of Delmont and Delmont University ("Respondents") to study the Pixelian Comet, a rare astrological event that occurs only once every ninety-seven years. R. at 1. To fund the Visitorship, the State of Delmont approved the Astrophysics Grant, which provided funding for the Principal Investigator, his salary, use of Delmont University's observatory facilities and equipment, funding for research assistants, and incidental

costs associated with the study of the Pixelian Event. R. at 1. Further funding was for the Delmont Press to cover the costs of publishing scientific articles, a final summative monograph, and the creation of a public dataset. R. at 1-2. The Astrophysics Grant required that the study of the event and any subsequent conclusions conform to the "academic community's consensus view of a scientific study." R. at 5. This was because Delmont University wanted "the Observatory to be a purely academic institution," not one that "publish[es] religious ideology." R. at 53.

Upon being awarded the grant, Dr. Nicholas went straight to work studying the Pixelian Event at the Observatory. In his first nine months, he published a series of cosmic measurements in the peer-reviewed journal *Ad Astra*. R. at 6. His findings generated buzz in the scientific community and garnered no protest from Respondents. R. at 6. Six months later, however, Dr. Nicholas sought to publish his new observations in *Ad Astra*. R. at 6. In this new work, he relayed standard data derived from the comet's travel and noted that the atmospheric phenomena resembled cosmic changes that Meso-American indigenous tribes commented on in their ancient religious history. R. at 6-7. He also suggested that the occurrence was consistent with the "Charged Universe Theory," an unpopular scientific theory that contended that charged particles, rather than gravity, were the foundation of cosmological universal phenomena. R. at 7. Although the theory had a minority of supporters, and could not be disproven by opponents, it nevertheless was not the academy's consensus view. R. at 7. This subsequent article was not met with the same reaction from the press, the academy, and Respondents. R. at 7-9. Some scholars noted, though, that Dr. Nicholas could be onto "something big" and only time and further study would tell. R. at 9. Despite the controversy, Dr. Nicholas's focus remained on studying the Pixelian Event from a scientific perspective and he was open to whatever findings resulted, regardless of whether the Charged Universe Theory, or religion, was implicated. R. at 8.

The University's President, Miriam Seawall, after receiving negative press stemming from the article and dealing with upset donors, penned a letter to Dr. Nicholas on January 3, 2024. R. at 10. She expressed dissatisfaction with Dr. Nicholas's latest article and stated that the University could not gamble with the reputation of the Observatory, nor could it be seen as endorsing his Meso-Paganist faith. R. at 10. Dr. Nicholas promptly responded, stating that his conclusions were based on science and that no one entity could determine what was scientific. R. at 10. He also brought up instances where the University had allowed other faculty scientists to rely upon the writings of other pagans without incident. R. at 10. President Seawall replied, retorting that the State of Delmont would only subsidize "science-based conclusions" and that the University could not be perceived as endorsing his Meso-Paganist faith system. R. at 10-11. Despite Respondents' concerns, however, Dr. Nicholas had not been accepted into any Meso-Pagan seminary, had not applied, and had only publicly depicted applying as a possibility. R. at 54, 57.

The back-and-forth communications between him and President Seawall ended with an ultimatum: Dr. Nicholas must agree to limit his study and conclusions to the academic community's consensus view of a scientific study by a specified date, or he would lose the Visitorship. R. at 11. He refused, stating that his study and conclusions were scientific. R. at 11. The next day, Dr. Nicholas found his admittance to the Observatory unceremoniously revoked. R. at 11. President Seawall and the Observatory, in a joint press release, announced Dr. Nicholas's termination due to a "fundamental disagreement . . . over the meaning of science" and that they could not "countenance the confusion of science and religion." R. at 11.

In response to the termination of his grant funding, and his exclusion from the premises by Respondents, Dr. Nicholas brought this suit on February 5, 2024. R. at 12. He requested injunctive relief to prevent Respondents from excluding him and sought the reinstatement of his grant

benefits, specifically his salary, use of the facilities, and payment of his research assistants through the end of the grant period. R. at 12. Both parties filed cross-motions for summary judgment. R. at 12. On February 20, 2024, the District Court granted summary judgment in favor of Dr. Nicholas. R. at 13. On March 7, 2024, the Fifteenth Circuit Court of Appeals reversed the judgment of the District Court, granting summary judgment in favor of Respondents. R. at 51. Dr. Nicholas filed a Petition for Writ of Certiorari, which this Court granted. R. at 59-60.

SUMMARY OF THE ARGUMENT

This Court should reverse the Fifteenth Circuit and reinstate the District Court's decision. The Astrophysics Grant's condition that Dr. Nicholas conform his conclusions to the "academic community's consensus view of a scientific study" violates the unconstitutional conditions doctrine. First, the condition is viewpoint discriminatory, because it attempts to suppress Dr. Nicholas's conclusions that support the Charged Universe Theory and Meso-Paganism. Even if this Court finds that the condition is not viewpoint discriminatory, it is still engaging in content-based discrimination. In either instance, Respondents cannot satisfy strict scrutiny requisite to uphold their discriminatory condition, as they do not have a compelling interest to suppress Dr. Nicholas's speech, and their condition is not narrowly tailored to achieve their interest of preventing confusion between science and religion. Second, the condition leverages Dr. Nicholas's funding to suppress his research and conclusions, coerces him to accept a view he does not agree with, and penalizes him for his speech that falls outside of the consensus view.

Furthermore, Respondents' state-funded Astrophysics Grant would not violate the Establishment Clause, as it is a neutral government program. The grant is a neutral government program because Respondents acted with secular purposes when creating the grant and the grant has neutral and secular terms. The grant itself lacks any religious content or motive, and it would only

be through Dr. Nicholas's independent choice that any religious association would occur. As any public funds or benefit flowing to religion would only be through Dr. Nicholas's independent choices, the grant would not violate the Establishment Clause. Further, Respondents cannot engage in status- nor use-based discrimination against Dr. Nicholas based on the asserted religious use of the funds. Neither is *Locke v. Davey* binding on these facts, nor can Respondents use the Establishment Clause as an excuse to engage in stronger separation of church and state than the Constitution requires. Finally, Respondents are not owed deference in this decision, have adequate remedies to distance themselves from Dr. Nicholas's publications, and funding the grant would not impermissibly coerce observers. Such conclusions are supported by the Establishment Clause's historical application and call for mutual respect and tolerance, not censorship and suppression.

ARGUMENT

I. THE ASTROPHYSICS GRANT'S REQUIREMENT IS AN UNCONSTITUTIONAL CONDITION THAT VIOLATES THE FIRST AMENDMENT.

The unconstitutional conditions doctrine prohibits Respondents from using state funding to coerce, compel, or otherwise achieve a result they cannot directly command. *See Speiser v. Randall*, 357 U.S. 513, 527 (1958). The grant requirement that Dr. Nicholas conform his publications to the academy's consensus view of science is an unconstitutional condition because it is viewpoint discriminatory and leverages his funding to suppress his speech.

A. The grant's condition is viewpoint discriminatory.

At its core, the First Amendment prohibits state actors from suppressing speech because of the speech's message, idea, subject matter, or content, no matter how offensive or disagreeable society may find it to be. *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 97 (1972). Viewpoint discrimination is an egregious form of content discrimination that occurs when the specific

ideology, perspective, or opinion of the speaker is the rationale for the regulation. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (finding a university engaged in improper viewpoint discrimination when it denied student activities funds to student magazine addressing public policy issues from a Christian perspective); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992) (finding an ordinance that banned the display of hate symbols to be viewpoint discriminatory). Dr. Nicholas's initial publication of a series of cosmic measurements in *Ad Astra* drew no negative attention or actions from Respondents. R. at 6. When he sought to publish about Meso-American influences in his conclusions, as well as the Charged Universe Theory, Respondents became troubled. R. at 6. Like the university in *Rosenberger* denying the Christian organization access to the funding program, Respondents are trying to prevent the dissemination of information based on the speaker's ideology and perspective by targeting his resources under the grant. Had Dr. Nicholas not published his theories on the Charged Universe Theory and Meso-Paganism, and had the organization in *Rosenberger* not been one that held Christian values, the outcomes in both instances would have been different. *See Rosenberger*, 515 U.S. at 831.

Furthermore, the condition, on its face and as applied, suppresses speech that does not represent the majoritarian view of science. *See R.A.V.*, 505 U.S. at 391 ("The First Amendment does not permit [a state] to impose prohibitions on speakers who express views on disfavored subjects."); *Matal v. Tam*, 582 U.S. 218 (2017) (invalidating viewpoint discriminatory federal law that prohibited "disparaging" trademark names because "speech may not be banned [if it] expresses ideas that offend"). Just like the above landmark cases, Dr. Nicholas is expressing a disfavored minority viewpoint. R. at 7-10. Respondents admit in the record that they terminated Dr. Nicholas's funding because they disagreed with him "over the meaning of science." R. at 15. Respondents also referred to Dr. Nicholas's conclusions as supporting "dubious religious positions"

and "extreme views." R. at 10. The University, in its initial letter to Dr. Nicholas, cited the reactions of the public and the academy to his "controversial" conclusions when expressing its displeasure. R. at 10. Respondents did not once mention their concern with the public confusion between science and religion, but rather justified their actions by noting that they could not "gamble with the reputation of the observatory," nor could they be seen as "endorsing a religious tenet." R. at 10. It is exactly this kind of viewpoint hostility that this Court rejected in *R.A.V.* and *Matal* when the governments were suppressing unpopular ideas.

B. Even if this Court finds that the condition is not viewpoint discriminatory, it is still content discriminatory.

Respondents' condition discriminates against Dr. Nicholas's speech based on the substance of his message. *See Reed v. Town of Gilbert*, 576 U.S. 155, 156 (2015) (invalidating an ordinance that regulated the placement of directional signs more harshly than political or ideological signs); *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790-91 (2011) (invalidating a law that prohibited the sale of violent video games to minors). Just as the directional signs in *Reed* and the violent video games in *Brown* were treated more harshly than other types of signs, or non-violent video games, Dr. Nicholas's conclusions based on the Charged Universe Theory, or Meso-Paganism, are treated more harshly because they are not within the consensus view. Respondents' content-based motivations are evident in the record; the President of the University states that although the University values religious ideology and research, it is a "purely academic institution" and therefore it cannot be seen as endorsing a "religious tenet." R. at 10.

Respondents cannot escape a content-based classification of their condition by employing the use of vague and seemingly innocuous verbiage in their condition. *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 74 (2022) ("[A] regulation of speech cannot escape

classification as facially content-based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result."). The consensus view verbiage can be swapped out with majoritarian or popular view, to the same effect. Respondents cannot justify their exclusion of Dr. Nicholas's conclusions or explain how the Charged Universe Theory does not conform to the academy's consensus view of science without "refer[ring] to the content of the regulated speech." *Reed*, 576 U.S. at 164. Similarly, if the academy were to be asked what its consensus view is, it would not be able to answer the inquiry without listing out various scientific theories it approves and disproves of.

C. Respondents fail to satisfy strict scrutiny.

Whether the grant's condition is deemed viewpoint or content discriminatory by this Court, the condition must be narrowly tailored to serve a compelling governmental interest to survive. *See Brown*, 564 U.S. at 799 (finding that "ambiguous proof will not suffice" to meet the strict scrutiny standard). Respondents fail to specifically identify an actual problem in need of solving, show that Dr. Nicholas's speech is a necessary solution to such a problem, and craft a solution that does not target more speech than is necessary to solve the problem. *See id*.

Respondents fail to show that (1) there is an actual public confusion problem in Delmont between science and religion and (2) that it is so severe as to necessitate the grant condition. *See Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 385 (1993) (noting that the record was devoid of any evidence to support the state's justification that the presentation of a religious film would cause public unrest or violence); *Brown*, 564 U.S. at 799 (finding that the state did not have a compelling interest to ban video game sales to minors where it could not show a direct causal link between violent video games and harm to minors). Respondents, like the state

in *Lamb's Chapel*, have mustered up zero evidence to illustrate the problem of public confusion or that it is even severe enough in Delmont to warrant First Amendment infringement.

Given that Respondents seek to suppress scientific academic speech on a highly publicized issue, they must proffer a compelling reason to do so. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964) ("[D]ebate on public issues should be uninhibited, robust, and wide-open."); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (recognizing academic freedom as a right of special concern to the First Amendment); *Stanley v. Georgia*, 394 U.S. 557 (1969) (recognizing the right of individuals to receive information regardless of its social worth). Yet, state interests like Respondents' public confusion concern have been consistently deemed insufficient by this Court. *See Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1975) (striking down a regulation that sought to suppress price information for fear of deceiving or misleading consumers); *Morse v. Frederick*, 551 U.S. 393 (2007) (finding that speech should not be restricted simply because it can be misinterpreted by others); *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 503 (1996) ("The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."). Compelling reasons to suppress speech on topics of public importance are scarce, but have included interests such as national security, *Snepp v. United States*, 444 U.S. 507, 510 n.3 (1980); public safety, *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942); the protection of minors, *New York v. Ferber*, 458 U.S. 747, 756-57 (1982); and victim privacy, *Fla. Star v. B.J.F.*, 491 U.S. 524, 534 (1989). Respondents' proffered wish not to countenance the public confusion between science and religion fails to rise to the same level of importance.

The existence of adequate content-neutral alternatives that Respondents could have employed significantly undercuts any argument that the condition is narrowly tailored. *See R.A.V.*,

505 U.S. at 395 (invaliding an ordinance that banned all cross burnings); *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000) (invalidating a law that restricted cable providers to showing sexually explicit shows only late at night to avoid children from viewing it). Like the state actors in *R.A.V.* and *Playboy*, Respondents had content-neutral alternatives to ameliorating the confusion between science and religion. Respondents could have utilized disclaimers, *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361 (2018); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980); counteracted any confusion with their own speech, *Wooley v. Maynard*, 430 U.S. 705 (1977); or, in theory, crafted a university-wide publication approval system with nondiscriminatory delineated criteria.

The condition also severely limits more speech than is necessary to achieve Respondents' goal. *See United States v. Stevens*, 559 U.S. 460, 481-82 (2010) (striking down a law banning "crush videos" due to over broadness where it criminalized a substantial amount of speech that had nothing to do with the underlying concern of preventing animal cruelty for sexual purposes). Like the law in *Stevens*, the condition language can be utilized to suppress speech that does not cause any public confusion between science and religion simply because it does not fit into the "consensus view." The view of the academy can potentially change over time, and because there are no codified guidelines, can be applied to limitless speech. For example, the record contains no evidence that the Charged Universe Theory, which is a cosmic theory, is religious in nature. The condition also fails to address other instances where science and religion intermingle. *See Cohen v. California*, 403 U.S. 15 (1971) (finding underinclusive a law that prohibited offensive conduct where it singled out the defendant's message critiquing the draft yet permitted other forms of offensive language); *Reed*, 576 U.S. at 171 (striking down an ordinance that set time, place, and manner restrictions on select town signs to "beautify" town and maintain traffic safety was "hopelessly underinclusive"). Like the laws in *Cohen*

and *Reed*, Respondents' condition fails to address publications by other Delmont faculty that referenced and relied upon other Pagan sources. R. at 10. Respondents also instructed Dr. Nicholas to publish elsewhere the very same opinions that they fear will contribute to the public confusion between science and religion; this presents the same defect that was at issue in *Reed*. R. at 10. In *Reed*, this Court held that the town could not claim the regulations were necessary to beautify the town or maintain traffic safety where it allowed the other signs to be placed indefinitely, although they created the same exact problem. *Reed*, 576 U.S. at 172. Similarly, Respondents, by allowing these other pagan-influenced articles to be published, and by allowing Dr. Nicholas to publish his work on the Charged Universe Theory in other mediums, proves that their condition is not necessary.

D. The condition leverages Dr. Nicholas's grant benefits to suppress his right to free speech.

Respondents may not deny Dr. Nicholas a benefit, such as his funding, salary, or employment, "on a basis that infringes his constitutionally protected . . . freedom of speech" even if he has no entitlement to that benefit; nor may they use the condition to coerce a result they cannot directly command. *See United States v. Am. Libr. Ass'n*, 539 U.S. 194, 210 (2003) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)); *see also Regan v. Tax'n With Representation of Wa.*, 461 U.S. 540, 545 (1983) ("[It] is certainly correct . . . that we have held that the government may not deny a benefit to a person because he exercises a constitutional right.").

Respondents' condition overreaches into suppressing speech outside the contours of the Visitorship. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214-17 (2013) (invalidating a condition that required recipients of federal funds to explicitly oppose prostitution); *FCC v. League of Women Voters of Ca.*, 468 U.S 364, 399 (1984) (invalidating a funding condition that required recipient news stations not to engage in editorializing); *Legal Servs. Corp. v. Velazquez*,

531 U.S. 533 (2001) (invalidating a funding condition that prohibited non-profit attorneys from challenging welfare laws). *But see Rust v. Sullivan*, 500 U.S. 173, 193 (1990) (upholding a condition that prohibited employees in federally funded family planning facilities from providing abortion counseling); *Regan*, 461 U.S at 545 (upholding tax code requirement that nonprofit organizations seeking tax-exempt status not engage in substantial lobbying activities). The Visitorship was established to advance the study of the Pixelian Event, but the consensus view condition affects Dr. Nicholas's speech beyond the program objective. Like the funding recipients in *Agency for International Development*, *League of Women Voters*, and *Velazquez*, and unlike the organization in *Regan*, Dr. Nicholas does not have a feasible means of expressing his views outside the scope of the Visitorship. Dr. Nicholas cannot, at the same time, attribute the Charged Universe Theory to being the cause of the Pixelian Event and promote a separate contradictory conclusion in his University-subsidized publications. This situation benefits no party involved; not only would Dr. Nicholas pay the price for his "evident hypocrisy" with his harmed reputation in the academic community, but this would also undermine Respondents' program and not promote their goal of not countenancing the confusion between science and religion. *See Agency for Int'l Dev.*, 570 U.S. at 219.

Furthermore, the condition was wielded by Respondents as a weapon to punish Dr. Nicholas for refusing to suppress his speech. *See Speiser*, 357 U.S. at 518 ("To deny [a governmental benefit such as funding] 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 [such] speech."); *Healy v. James*, 408 U.S. 169, 170 (1972) (invalidating a university's denial of a student organization's application for official recognition where the university was concerned about the organization's views on violent protest). The organization in *Healy* was allowed to express its views; it was just denied the benefits of recognition as a student group. 408

U.S. at 170. Similarly, the Christian organization in *Rosenberger* was not prevented from espousing its views on campus, but it was barred from participation in the University's funding program for student groups and publications if they engaged in such proselytizing. 515 U.S. at 827. After Dr. Nicholas refused to concede to Respondents' demands to limit his study and conclusions to the academic community's consensus view of a scientific study, the very next day he was stripped of his access to the Observatory and his Visitorship. R. at 11.

Similarly, the doctrine protects public employees such as Dr. Nicholas from having their employment dangled in front of them as a means of coercion. *See Rankin v. McPherson*, 483 U.S. 378 (1987) (holding that a public employee could not be discharged for exercising her right to free speech under the First Amendment); *Connick v. Myers*, 461 U.S. 138, 142 (1983) (stating that public employment cannot be conditioned on the waiver of First Amendment rights). Furthermore, he was speaking on a matter of public importance—the Pixelian Event is a highly publicized event that has worldwide recognition and occurs only once every ninety-seven years. R. at 1, 6. *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968) (holding that employees have a right to speak on issues of public importance without being dismissed from their position). As such, this Court should find that his termination from his position as Principal Investigator violated the doctrine.

E. The government speech doctrine is inapplicable because the grant's condition targets and restricts private speech.

An exception to both viewpoint discrimination and the unconstitutional conditions doctrine permits the government to engage in either conduct when it is expressing its own message. That exception does not apply here, however, because the Astrophysics Grant restricts private speech. *See Velazquez*, 531 U.S. at 542 (holding that the state was facilitating a non-profit's private speech where it was subsidizing the provision of free legal services instead of dictating a specific message

for the lawyers to express to their clients); *Rosenberger*, 515 U.S. at 833 (explaining that an activities fund administered by a state university did not involve government speech, but was a governmental initiative designed to encourage and facilitate private speech). The grant functions similarly to the funds given to the organizations in *Rosenberger* and *Velazquez*—it provides funding and resources to facilitate Dr. Nicholas's research and conclusions on the Pixelian Event. R. at 5. Furthermore, simply requiring that research conclusions conform to pre-approved scientific standards does not dictate a specific message or policy. Merely because Respondents provided resources and funding for the program, as well as controlled hiring, does not suddenly transform Dr. Nicholas's private speech into that of the government's speech. *See S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 544 (1987) ("Even extensive regulation by the government does not transform the actions of the regulated entity into those of the government.").

Moreover, Respondents are not speaking through their Visitorship. *See Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S 200, 210-13 (2015) (finding that specialty license plates were a form of government speech). Unlike the license plates in *Walker*, scientific studies are not "closely identified in the public mind with the State." *See id.* at 212. Although state actors engage in scientific research, it is not so exclusive as to conclude that any scientific study is state-sponsored. Unlike with license plates, the state does not have a monopoly on scientific studies. Manuela F. Pinto, *Open Science for Private Interests? How the Logic of Open Science Contributes to the Commercialization of Research*, Frontiers Rsch. Metrics & Analytics, Nov. 2020, at 1-3 (explaining that most scientific research is conducted and funded by private industry). License plates, by their nature, contain government markers, such as the name of the state, that make their "governmental nature" clear. Due to this distinct element, disclaimers were found to be ineffective in *Walker*. That is not the case with Respondents' program, however. Respondents can use

disclaimers to effectively disavow a connection with Dr. Nicholas's conclusions. Thus, there is not the same likelihood that readers will associate Dr. Nicholas's message with the University.

F. Respondents' actions offend First Amendment foundational principles.

The marketplace of ideas theory, which posits that truth will emerge from competition between factual claims, is encapsulated perfectly within the realm of scientific discovery and evolution. *See Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J, dissenting) ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market . . . . That . . . is the theory of our Constitution."); *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Some of the most widely accepted scientific theories today were once at odds with the existing scientific consensus at the time. Thomas S. Kuhn, *The Structure of Scientific Revolutions* 6 (1962). The theories of continental drift, heliocentrism, and even the invention of X-rays were initially dismissed as anomalies before later being acknowledged as evidence supporting a theory that ultimately supplanted the prior consensus view. *Id.* Notably, astronomer Galileo Galilei was prosecuted for his disseminating information in support of heliocentrism—yet today it is the leading operational theory of our solar system. Mario Livio, *Galileo and the Science Deniers* 228-29 (2020). Furthermore, a predecessor to many revolutionary ideas in science that have superseded the status quo required a rejection of the status quo or a recognition of its shortcomings. Kuhn, *supra*, at 66 (noting that Galileo's contributions to the study of motion depended upon difficulties he encountered with Aristotle's theory and that Copernicus's rejection of the Ptolemaic paradigm was a precursor to his development of heliocentrism).

The existence of the Charged Universe Theory serves two important purposes in the marketplace of scientific ideas: either to be questioned by the community on its quest and natural progression to the next groundbreaking theory that will supplant it or to become that theory itself.

Scholars have even noted that Dr. Nicholas could be "onto something big" and that further time and study were required to determine if this were the case. R. at 9. History illustrates to us that it is prudent to maintain a long view when evaluating scientific theories; for example, Copernicus's theory of heliocentrism did not become the consensus view of the solar system until nearly two centuries after his death. Kuhn, *supra,* at 150. Also, by prohibiting Dr. Nicholas from publishing on the Charged Universe Theory, Respondents are expressing that they do not believe that theory is scientific. R. at 10. Not only does the First Amendment soundly reject the notion of allowing one entity, especially the state, to become the sole judge of what ideas are worthy of dissemination, but history repeatedly proves science to be inconclusive: existing theories are constantly being supplanted by newer ones. There is no guarantee that the consensus view held by the academy will always be the same one; history demonstrates how this is an unlikelihood.

II. THE STATE-FUNDED ASTROPHYSICS GRANT WOULD NOT VIOLATE THE ESTABLISHMENT CLAUSE.

The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. The Clause "must be interpreted by 'reference to historical practices and understandings.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)) (rejecting the *Lemon* and endorsement tests). Based on historical practices and understandings, the state-funded Astrophysics Grant would not violate the Establishment Clause because it is a neutral government program. Further, the grant would not violate the Establishment Clause because any public funds or benefit flowing to religion would only be through Dr. Nicholas's independent choices.

A. The Astrophysics Grant is a neutral government program.

This Court has repeatedly emphasized that "the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs." *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2254 (2020); *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 764 (1995) ("[A]s a matter of Establishment Clause jurisprudence, we have consistently held that it is no violation for government to enact neutral policies that happen to benefit religion."). Here, because the Astrophysics Grant is nothing more than a neutral government program where religious observers and organizations may benefit, it would not violate the Establishment Clause.

The Astrophysics Grant is a neutral government program because Respondents acted with secular purposes when creating the grant. *See Espinoza*, 140 S. Ct. at 2254 (holding that the state's scholarship program benefiting students attending religious schools would be neutral and constitutional because the state acted with the secular purpose of providing parental and student choice in education); *Carson v. Makin*, 596 U.S. 767, 773-74, 781-82 (2022) (noting the neutrality of a program with the secular purpose of providing education to students without a public school in their area). Respondents acted with the secular purposes of bringing attention to the GeoPlanus Observatory and taking advantage of the Pixelian Comet's appearance when creating the Astrophysics Grant. R. at 1. The grant's goal was to further the observatory as a premier center for celestial study—not to advance religion. R. at 5. Indeed, at the grant's creation, Respondents "made it clear that these resources would be used to render and publish conclusions aligned with the scientific academy's consensus" because they wanted "the Observatory to be a purely academic institution," not one that "publish[es] religious ideology." R. at 53. Further, Respondents were, indeed overly, vigilant in the administration of the grant, seeking to avoid content with religious themes, adding to the grant's secular purpose and characterization. R. at 53-54.

Additionally, the Astrophysics Grant's neutral and secular terms show it is a neutral government program. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 653 (2002). In *Zelman*, this Court held that the neutrality of a program providing tuition aid to students attending religious schools was apparent due to the program's neutral terms, conferral of benefits without reference to religion, and lack of religious financial incentives. *Id.* at 653. Here, the Astrophysics Grant has entirely neutral terms, was conferred without any reference to religion, and lacks financial religious incentives. The grant's terms provide funds for the Principal Investigator's salary, research assistants, use of Delmont University's facilities and equipment, and incidental costs associated with studying the Pixelian Event. R. at 5. Further funding covers the costs of publishing scientific articles, a final summative monograph, and the creation of a public dataset. R. at 1-2. Noticeably absent from these terms is any reference to religion. Moreover, the grant conferred benefits without any regard to religion. Dr. Nicholas was selected from an overwhelming number of applications based on academic and scientific merit, being "widely-known in the field" and a "'Wunderkind' with intuitive observations." R. at 53. As the grant's funds were "allocated on the basis of neutral, secular criteria," no financial incentives skew it towards religion either. *See Zelman*, 536 U.S. at 653.

Since the Astrophysics Grant is a neutral government program, even if Dr. Nicholas suggested the study's data supports further research into religious symbolism, that is the type of "indirect government support" and "benefit from neutral government programs" that the Establishment Clause permits. *See Espinoza*, 140 S. Ct. at 2254 (noting that awarding scholarships to students attending religious schools would be mere "indirect government support" towards religion). Decades of this Court's precedent support the conclusion that the grant would not violate the Establishment Clause. Governments may pay the bus fares of students attending religious schools, *Everson v. Bd. of Educ.*, 330 U.S. 1, 17 (1947); provide textbooks to religious schools,

Bd. of Educ. v. Allen, 392 U.S. 236, 248 (1968); allow tax exemptions for churches, *Walz v. Tax Comm'n*, 397 U.S. 664, 679-80 (1970); authorize tax deductions for educational expenses even where 96% of the beneficiaries are parents of children attending religious schools, *Mueller v. Allen*, 463 U.S. 388, 404 (1983); channel funds for educational materials and equipment in religious schools, *Mitchell v. Helms*, 530 U.S. 793, 829 (2000); fund a tuition program where the vast majority of beneficiaries are enrolled in religious schools, *Zelman*, 536 U.S at 662-62 (decided in 2002); provide grants to churches and other religious organizations to purchase playground surfaces, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466 (2017); supply scholarships to students attending religious schools, *Espinoza*, 140 S. Ct. at 2254 (decided in 2020); and pay students' tuition to religious schools, *Carson*, 596 U.S. at 781-82 (decided in 2022).

B. Any public funds or benefit flowing to religion would only be through Dr. Nicholas's independent choices.

"A neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause." *Carson*, 596 U.S. at 768; *Mueller*, 463 U.S. at 399 (emphasizing that government approval is not conferred on a religion when aid to religion results from the independent choices of private benefit recipients); *Espinoza*, 140 S. Ct. at 2264 (stating that an Establishment Clause objection to the program at issue would be "particularly unavailing" because any aid to religion would only be as a result of recipients' independent choice). The Astrophysics Grant, a neutral benefit program, would not violate the Establishment Clause, even if Dr. Nicholas expressed an interest in using the study to support his religious vocation, because any public funds or benefit flowing to religion would only be through Dr. Nicholas's independent choices as a private benefit recipient.

In *Witters v. Washington Department of Services for the Blind*, this Court held it was no Establishment Clause violation for a secular state assistance program to extend aid to a student studying at a religious college who sought to become a pastor, missionary, or youth director. 474 U.S. 481, 482 (1986). There, it was but a "mere circumstance" that the student used neutrally available state aid to pay for his religious education. *Id.* at 488-89. Further, in *Zelman*, though 96% of a government program's recipients used the benefits to attend religious schools, the benefit to religion was attributable to the individual recipients, not the government, whose role ended with the disbursement of benefits. 536 U.S. at 647, 662-63 (holding that the program was one of true private choice and did not offend the Establishment Clause). Likewise, here, Respondents provided neutrally available, secular state aid. R. at 3. The grant's terms specifically sought to avoid publishing religious ideology so the Observatory would be a purely academic institution. R. at 53. The grant itself does not profess beliefs nor prepare any sage applications, and readers can clearly see Dr. Nicholas is the author of any research published using the funds. Notably, Dr. Nicholas's focus remains on studying the Pixelian Event from a scientific perspective and remains open to whatever findings result, whether religion is or is not implicated. R. at 8. Consequently, whether or not the grant funds research that benefits religion is entirely up to Dr. Nicholas. Thus, the grant is a program of true private choice where any public funds or benefit flowing to religion would only be attributable to Dr. Nicholas's independent choice, a "mere circumstance." Respondents' role ends with the disbursement of funds.

Moreover, Respondents cannot engage in status- nor use-based discrimination when evaluating Dr. Nicholas's independent choices. *See Carson*, 596 U.S. at 787-89 (eliminating status- and use-based distinctions and holding that the government could not deny funding based on the asserted religious use of those funds). Thus, Respondents cannot deny funding to Dr.

Nicholas based on the asserted religious use of the grant's funds. Yet, Respondents did just that. Upon conditioning further funding under the grant, Respondents clearly prohibited any references to Meso-Paganism. R. at 10-11.

Additional considerations further support the permissibility of the Astrophysics Grant funding Dr. Nicholas's research. First, *Locke v. Davey* is not binding on these facts because the grant is not a vocational religious degree and any preparation for the ministry, if any preparation occurs at all, would only be through Dr. Nicholas's independent choice, not because of the grant. *See* 540 U.S. 712 (2004). While this Court in *Locke* allowed the government to decline to fund students' vocational religious degrees, this Court has more recently emphasized that *Locke* "cannot be read beyond its narrow focus on vocational religious degrees." *Carson*, 596 U.S. at 789. A degree is "awarded to a student who has successfully completed a full course of study." *Degree*, *Black's Law Dictionary* (11th ed. 2019). Fundamentally, Dr. Nicholas could not emerge from the Visitorship with a degree, as the grant has no coursework nor curriculum. Moreover, the grant has no religious vocation. There is nothing intrinsically religious about the grant and it is neutral and secular in its terms, being created to "publish conclusions aligned with the scientific academy's consensus." R. at 53. Hence, the grant has no overarching religious theme or message, and it simply funds private individuals publishing independent research.

Further, a central aspect of *Locke* was that the vocational religious degrees were "intended to be used 'to prepare for the ministry.'" *Carson*, 596 U.S. at 788 (quoting *Trinity Lutheran*, 582 U.S. at 464). Here, the Astrophysics Grant itself does not prepare Dr. Nicholas for ministry. It is only through Dr. Nicholas's independent choice that any preparation for the ministry would occur, independent choice that this Court has explicitly endorsed as greatly lessening if not eliminating establishment concerns. *See Carson*, 596 U.S. at 788; *Zelman*, 536 U.S. at 647. Dr. Nicholas's

independent choice about becoming a First Order Sage is not certain to happen, either: he has not been accepted into any Meso-Pagan seminary, has not applied, and has only expressed applying as a possibility. R. at 57. This further shows that the grant itself does not prepare Dr. Nicholas for ministry because he could, and did, receive funds from the grant without ever becoming a sage.

Second, Respondents may not use the Establishment Clause as an excuse to engage in stronger separation of church and state than the Constitution requires. *See Carson*, 596 U.S. at 781. While Respondents claim Dr. Nicholas's research raised an Establishment Clause concern and served as the basis for terminating funding, Respondents' "interest in avoiding an Establishment Clause violation" does not "trump[]" Dr. Nicholas's "rights to religious exercise and free speech." *Bremerton*, 597 U.S. 532. This principle was well illustrated in *Trinity Lutheran*, where the government could not use the Establishment Clause as a basis to deny otherwise eligible recipients a public benefit because of the recipients' religious character. 582 U.S. at 462. Such action impermissibly puts recipients to a choice: "They may participate in an otherwise available benefit program *or* remain a religious institution." *Id.* at 462 (emphasis added). Here, Dr. Nicholas is an otherwise eligible recipient of a public benefit who is being denied its funds because of his religious character. He is put to the same impermissible catch-22 in *Trinity Lutheran*: He may participate in publishing impassionate research under the otherwise available grant *or* hold true in observing his Meso-Paganist faith.

Moreover, Respondents refusing to fund Dr. Nicholas's research because of its potential religious influence likewise runs afoul of the Constitution. *See Carson*, 596 U.S. at 789 (holding a government program unconstitutional when it barred religious schools from receiving benefits); *Espinoza*, 140 S. Ct. at 2262-63 (holding a government program unconstitutional when it refused to provide aid to religious schools); *Trinity Lutheran*, 582 U.S. at 467 (holding a government program

unconstitutional when it categorically denied religious entities from receiving grants). Respondents make it clear they are willing to fund research, but not research that may have Meso-Paganist themes. R. at 10-11. Such discriminatory treatment was impermissible in *Carson*, *Espinoza*, and *Trinity Lutheran*, and it is impermissible here. Additionally, as this Court has repeatedly held, hostility or animus towards religion has no place in government decision-making and actions. *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 625 (2018) (noting a government's "obligation of religious neutrality"). Respondents' hostility to Meso-Paganism is clear, associating it with "weird science" and allowing other Greek, Roman, Incan, and Phoenician religious publications but not Meso-Paganist publications. R. at 9, 10, 58.

Third, any deference Respondents argue they are owed under the *Grutter v. Bollinger*, 539 U.S. 306 (2003), line of cases in denying Dr. Nicholas's funding falls flat after *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (articulating limited deference to universities in affirmative action cases). Additionally, in *Widmar v. Vincent*, 454 U.S. 263 (1995), though this Court recognized some deference to universities when making academic judgments, this Court explicitly rejected the government's argument in achieving greater separation of church and state than the Establishment Clause requires. Therefore, the government's action was impermissible, and similarly, Respondents do not escape this result.

Fourth, Respondents have adequate remedies to distance themselves from Dr. Nicholas's publications. When a state argued that it feared misperceptions resulting from the display of a cross in a public square, namely that the cross would bear the state's approval, the Court countered that nothing prevented the state from requiring such private displays to be identified as such. *Capitol Square*, 515 U.S. at 769. Likewise, nothing prevents Respondents from issuing similar disclaimers that studies conducted under their funds do not constitute approval of or support towards religion.

Ad Astra did just that, publishing Dr. Nicholas's article with an asterisk stating Dr. Nicholas's interpretations were not reflective of the journal, its editors, or staff. R. at 8. Moreover, any concerns that funding Dr. Nicholas's research would amount to coercion are unfounded, as merely funding research that may have private religious themes cannot be seen as coercive, especially at the level of higher education. *See Bremerton*, 597 U.S. at 538.

Lastly, the above is consistent with this Court's jurisprudence that the Establishment Clause does not require Respondents to eliminate from the public sphere everything an observer could infer endorses or partakes in the religious. *See id.* at 536. Further, Respondents cannot use the Establishment Clause as a sword to single out Dr. Nicholas's religious faith for disfavor; instead, the Clause calls for "mutual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike." *See id.* at 535. Indeed, there is no historical analog from the Founding era that would suggest issue with funding Dr. Nicholas's research—the United States has a history and tradition of allowing government support towards religion in academic contexts. *Espinoza*, 140 S. Ct. at 2258 (recounting Founding era government support towards religion in academic contexts, noting active encouragement of such a policy); Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2173-74 (2003) (same). In sum, the Astrophysics Grant would not violate the Establishment Clause.

CONCLUSION

For the foregoing reasons, the Astrophysics Grant's requirement violates the unconstitutional conditions doctrine and presents no credible Establishment Clause violation. Therefore, the judgment of the Fifteenth Circuit Court of Appeals should be reversed, and the District Court's decision should be reinstated.

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.

CERTIFICATE OF COMPLIANCE

In accordance with Rule 33.1(h) of the Rules of the Supreme Court of the United States, we hereby submit this certificate of compliance to certify that this brief contains 8,938 words and complies with the required word limit.

In accordance with Rule III.C.3 of the Official Rules of the 2024 Seigenthaler-Sutherland Moot Court Competition, we hereby submit this certificate of compliance to further certify that:

(i) The work product contained in all copies of our team's brief is in fact the work product of the team members, and only the team members;

(ii) Our team has complied fully with the governing honor code of our school; and

(iii) Our team has complied with all Competition Rules.

Respectfully submitted,

/s/ Team 003
Team 003
Counsel for Petitioner
January 31, 2024