Team 4

NO. 23-CV-1981

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2023

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 RESPONDENTS

Counsel for Respondents

QUESTIONS PRESENTED

I. A government grant condition does not violate free speech rights if it serves the program's purpose or conveys the government's message. Delmont aimed to be the leading celestial study center by offering an Astrophysics Grant that promoted science over religion. Is the condition mandating alignment with the academy's scientific consensus unconstitutional?

II. The Establishment Clause prohibits the government from subsidizing any religion or religious activity using public funds. Petitioner unexpectedly conducted religious research under the Astrophysics Grant, hoping to become a First Order Sage in his faith. Does Delmont's publicly funded support of Petitioner's research and religious vocation violate the Establishment Clause?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

UNITED STATES SUPREME COURT CASES:

UNITED STATES CIRCUIT COURT CASES:

CONSTITUTION:

STATUTES:

LEGAL PERIODICALS:

OPINIONS BELOW

The opinion of the United States District Court for the District of Delmont, Mountainside Division, is unpublished and may be found in *Nicholas v. State of Delmont and Delmont University*, C.A. No. 23-CV-1981 (D. Delmont 2024). R. at 1–31. The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found in *Nicholas v. State of Delmont and Delmont University*, C.A. No. 23-CV-1981 (15th Cir. 2024). R. at 32–51.

STATEMENT OF JURISDICTION

The United States Circuit Court of Appeals for the Fifteenth Circuit entered a final judgment on this matter on March 7, 2024. Petitioner timely filed a Writ of Certiorari, which this Court granted. R. at 59–60. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

This appeal involves questions regarding the First Amendment's Free Speech Clause, Establishment Clause, and Free Exercise Clause as applied to the states through the Fourteenth Amendment. The First Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." U.S. Const. amend. I.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

The University of Delmont and the State of Delmont (collectively "Delmont") dreamed of becoming the leading center for celestial study due to Delmont's unique position. R. at 4. After years of fundraising, Delmont's GeoPlanus Observatory opened on Mt. Delmont with a state-of-the-art telescope and equipment. *Id.* This location—the highest peak in the Delmontain Mountain

Range—is considered a prime area to view celestial phenomena. *Id.* Delmont's dream was becoming a reality with the arrival of the Pixelian Comet. *Id.*

For the first time, Delmont offered a state-funded Astrophysics Grant ("Grant") to study the Pixelian Comet because of its rarity, occurring once every ninety-seven years. R. at 5. The Grant was to last two years to gather data and conclusions before, during, and after the Pixelian event. *Id.* The recipient would be the principal investigator and receive many benefits, including a final summative monograph on the event to be published by The University of Delmont Press.[1] *Id.* The Grant required any conclusions from the event to conform to the academic community's consensus view of a scientific study. *Id.* Cooper Nicholas ("Petitioner") was awarded the Grant in the Fall of 2021. While the Pixelian event took place, Delmont received substantial media attention. R. at 6.

Petitioner attempted to publish an article containing data on the event in *Ad Astra*, the premiere peer-reviewed journal in Astrophysics. The article stated research on the event supported the religious history of Meso-Pagan tribes. *Id.* It speculated that hieroglyphs showed celestial occurrences similar to those in the current study, supporting an electrical interplay in the universe that Meso-Pagans considered the "lifeforce." R. at 7. Meso-Pagans believe this lifeforce animates all living beings and holds all matter in a precarious balance. *Id.* Petitioner's article further speculated that the Pixelian event supported the Charged Universe Theory, a highly controversial theory in the academic community that states charged particles, rather than gravity, are responsible for cosmological phenomena. *Id. Ad Astra* was skeptical about publishing Petitioner's article because the Charged Universe Theory is not the scientific academy's consensus view of the cosmos. R. at 8. However, *Ad Astra* published Petitioner's article with an "asterisk" denoting that

[1] Other benefits included "salary, use of Observatory facilities and equipment, funding of research assistants, incidental costs associated with the study" and coverage of "all costs associated with the publication of scientific, peer-reviewed articles related to that event." R. at 5.

the publication did not endorse such an extreme view. *Id. Ad Astra*'s editorial board also expressed concerns that Meso-Pagan foundational texts were religious in nature, not empirical. *Id.*

Petitioner did not care about *Ad Astra*'s endorsement because he was open to any results, regardless of religious implications. *Id.* Petitioner hoped the results would support his personal beliefs relating to Meso-Paganism because he sought to use his findings as a vehicle for his application to become a Sage in the Meso-Pagan faith, a clerical position in this religion. R. at 9.

Once the article was released, negative responses flooded in from the academy and the press. *Id.* The academy discredited Petitioner's article as scientifically unprovable and "medieval." *Id.* The negative implications of Petitioner's article were tethered to Delmont's Grant, which embarrassed donors and supporters because Delmont was being mocked for its association with "weird science." *Id.* Applications for postgraduate studies had declined, and Delmont decided to address Petitioner or their reputation and investment in the Observatory could suffer. *Id.*

Delmont sent a letter to Petitioner reminding him to abide by the Grant's requirement that "the study of the event and the derivation of subsequent conclusions [must] conform to the academic community's consensus view of a scientific study." R. at 10. Delmont made Petitioner well aware that non-compliance would result in termination of the Grant. *Id.* Petitioner was told that he was free to publish whatever he wanted elsewhere, but under the Grant, Delmont made clear it would only subsidize science-based conclusions that aligned with the academic consensus. *Id.* Delmont emphasized that it could not be associated with endorsing Petitioner's Meso-Paganism religious belief. R. at 11. Petitioner responded that he would not be told what to conclude or what to research, even though he was well aware of the Grant's requirement when he accepted. R. at 10. Additionally, Petitioner stated that there was nothing unscientific about his research, disregarding the negative response from the academic community. R. at 11.

Delmont gave Petitioner an opportunity to realign with the condition, but he responded that his conclusions were scientific. *Id.* Delmont could not fund the confusion of science and religion, so the Grant was terminated because of the disagreement about the meaning of science. *Id.*

II. PROCEDURAL HISTORY

United States District Court for the District of Delmont: On February 5, 2024, Petitioner filed suit in district court seeking injunctive relief to reinstate the Astrophysics Grant. R. at 12. Petitioner alleged the condition violated his First Amendment free speech rights. *Id.* Delmont answered that the language in the Grant did not violate Petitioner's free speech rights and continuing to support Petitioner's work would violate the Establishment Clause. *Id.* Both parties filed motions for summary judgment under Rule 65(a) of the Federal Rules of Civil Procedure. *Id.* The district court granted Petitioner's motion, holding that Delmont violated Petitioner's First Amendment rights and that the Establishment Clause was not at issue. R. at 33.

United States Circuit Court of Appeals for the Fifteenth Circuit: Delmont appealed both issues to the Fifteenth Circuit. *Id.* The Fifteenth Circuit found that the Grant's requirement of research conclusions conforming to the academic community's consensus view did not violate Petitioner's Free Speech rights. R. at 34. The court further held that Delmont's continued support of Petitioner's research violated the Establishment Clause. R. at 44. Accordingly, the court determined that the lower court erred in granting summary judgment for Petitioner. R. at 51. The district court's decisions were reversed, and summary judgment was granted on both issues in favor of Delmont. R. at 34. Petitioner filed for writ of certiorari to the United Supreme Court, and the writ was granted. R. at 59, 60.

SUMMARY OF THE ARGUMENT

The First Amendment is the foundation woven in the fabric of our democracy. Safeguarding the marketplace of ideas and against the establishment of religion is of the utmost importance but a fine line exists because the needs of the many outweigh those of the few. As is the case here.

This Court should affirm the Fifteenth Circuit's decision on the first issue because the condition involved did not violate Petitioner's right to free speech. First, states may impose conditions on programs intended to benefit the public to ensure their purpose is achieved. These conditions are not subject to free speech review when the state is conveying its own message and, at the very least, must allow alternative channels where restricted speech can enter the marketplace. Second, when free speech review is triggered, this Court must consider the forum, content, interests, and burdens involved. Regardless of the level of review this Court applies, the Astrophysics Grant's condition survives the highest level of scrutiny, strict scrutiny. Therefore, the condition is constitutional.

Additionally, this Court should affirm the Fifteenth Circuit's decision on the second issue because Delmont had an interest in not violating the Establishment Clause by subsidizing the Meso-Paganist religion. *Locke* established settled law that funds may be denied if used for religious activity like advancing within the spiritual leadership. The intended use of public funds is a more important consideration than the nature of the recipient. Delmont terminated the Grant once Petitioner revealed his purely religious intentions. This was a decision by Delmont to retain their antiestablishment interest and maintain their reputation—a decision owed deference by courts. The judiciary best serves by saying what the law is, not in determining university practices and policies in achieving an academic mission. Therefore, terminating the Grant was a necessary decision to prevent an Establishment Clause violation.

ARGUMENT AND AUTHORITIES

Standard of Review. Both issues before this Court pose questions of law, which are reviewed de novo. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

I. THE FIFTEENTH CIRCUIT PROPERLY HELD THAT THE ASTROPHYSICS GRANT'S CONDITION DID NOT VIOLATE PETITIONER'S FREE SPEECH RIGHTS.

A cornerstone of American democracy, free speech rights encourage and protect the exchange of diverse ideas. However, although the government may not restrict speech, it does not need to help advance it. *Harris v. McRae*, 448 U.S. 297, 316 (1980). The Grant's purpose was to "advanc[e] scientific study of the [Comet]" and to make "the Observatory the foremost center for celestial study in the world[.]" R. at 1, 20. Delmont would not entertain Petitioner's highly-controversial theories that were adverse to the academy's consensus view of a scientific study.

A. The Government May Selectively Fund Speech Within the Scope of a Program to Further Its Intended Purpose.

The Government is entitled to define the limits of publicly funded programs. *Rust v. Sullivan*, 500 U.S. 173, 194 (1991). The Grant limitation set by the state of Delmont required that any conclusions regarding the Pixelian event be based on the academic community's standard of science. This limit ensures the program is strictly grounded in objective, scientific methodology.

The Government may selectively fund programs to promote activities it believes further public interest while excluding other activities. *Id.* at 193. In *Rust*, the government created a condition under Title X funds that restricted the funds from being used in programs that discussed or encouraged abortion as a method of family planning. *Id.* at 179–180. The Court upheld the conditions as constitutional and indicated that the government may implement value judgments

through the selective allocation of public funds. *Id.* at 192. The Court reasoned that conditioning federal funds to further the goal of a program is not unconstitutional. *Id.* at 198.

Like *Rust*, Delmont constitutionally conditioned funds to advance the program's purpose. Here, the Grant's condition ensured Petitioner's research stayed within the bounds of objective science. It is evident from the backlash of Petitioner's publication in *Ad Astra* that deviating from the Grant's condition by allowing "weird science" to be published in Delmont Press risked Delmont's reputation and financial investment in the observatory. A risk Delmont was not willing to take. Petitioner's Charged Universe Theory did not conform to the academy's scientific consensus. The Grant's condition was a value judgment made by Delmont not to be associated with radical ideas and not to blur the line between religion and science.

1. Government conditions are necessary to further a grant's intended purpose.

To protect programs, the government may place conditions on a grant that are determined by standards within a community. An example of this can be found in *Finley*, where standards of the American public were applied. *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 576 (1998).

In a "highly selective grant program," constitutionally protected speech may be denied funding. *Id.* at 585. Appellants in Finley gave government art grants based on standards of decency and respect for diverse American beliefs. Id. at 576. Respondents' applications were denied, and they argued their Free Speech rights were violated because the condition rejected speech that failed "to respect mainstream values or offends standards of decency." *Id.* at 580. The Court held that the "nature of arts funding" allows the government to deny art for a "wide variety of reasons" in consideration of the art's content. *Id.* at 585. The Court reasoned that "such favoritism does not

'abridge' anyone's freedom of speech" since artists can still create and speak however they want outside the program. *Id.* at 598.

Science funding, like art funding, is complex. The Court supported grant conditions tied to community values in *Finley*. Similarly, Delmont should be able to require research conforming with the academy's consensus. These similarities are too astronomical to ignore and ensure the program's objectives are not compromised. Grant conditions are necessary to further the Government's intention for a program. Art grants are for art, family planning grants are for family planning, and here, Delmont's science grant was for science. But not all art, family planning, and science must be funded. If that were the case, "numerous Government programs" would be "constitutionally suspect." *Rust*, 500 U.S. at 194.

Delmont attempted to promote science by studying the Pixelian Comet, a once-in-a-lifetime event. To achieve that goal, the Grant required many conditions. More specifically, the Grant was strictly for the study of empirical science. The Grant was to study the Pixelian Comet, no other event. The Grant was to support any scientific theory shared and accepted among the academy's consensus view. Petitioner's Charged Universe Theory and Meso-Pagan's lifeforce theory are outside the scope of that consensus view. The latter is not science at all. It is religious in nature.

2. The Grant's condition allowed Petitioner to speak outside of the Astrophysics program.

Unconstitutional conditions can be found when the government places restrictions on the *recipient* of the grant rather than the particular program, thus effectively prohibiting the recipient from engaging in protected speech outside the program's scope. *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 219 (2013). The Grant's condition constitutionally limited Petitioner's speech under the program, but he could express his ideas fully through other avenues.

Under the Grant, Petitioner did not have free reign to publish whatever he wanted. However, Petitioner could utilize other avenues to express his ideas, as seen when he published in *Ad Astra* twice. The Grant had no conditions against this.

This Court recognized long ago that the purpose of the First Amendment is to safeguard an "unfettered interchange of ideas." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)). The marketplace of ideas sits at the center of free speech rights, where one can buy and sell any ideas with certain limitations. The First Amendment does not ensure unrestricted speech at all times and in all manners, but conditions that do restrict speech must allow for alternative channels to minimize the burden. *Vincenty v. Bloomberg*, 476 F.3d 74, 88 (2d Cir. 2007). Simply stated, the crucial aspect of free speech rights is that an individual's speech can enter the marketplace of ideas without absolute government suppression.

Delmont's condition allows Petitioner's ideas to enter the marketplace through other channels. A comparison to the unconstitutional condition found in *Alliance* is necessary to differentiate what the Government may or may not do.

A distinction has emerged between conditions defining program limits and those that use funds to regulate speech beyond the program's scope." *Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. at 214. In *Alliance*, the Government granted funds to organizations dedicated to combating HIV/AIDS. *Id.* at 208. A condition on that funding required recipients to adopt a policy explicitly opposing prostitution and sex trafficking. *Id.* The Court held the condition was unconstitutional because it affected speech outside the program's scope. *Id.* at 218. The Court reasoned that an organization could not support the policy while spending the funds and then "turn around and assert a contrary belief . . . when participating in activities on its own time and dime." *Id.*

The condition in *Alliance* effectively suppressed an organization's speech by not allowing it to express its view in alternative channels. If the organization adopted the policy opposing prostitution and then stated the opposite on its own, "time and dime," the funding would have been removed. This is the type of situation courts are concerned with. However, that is not the situation this Court faces in the present case.

Petitioner claimed he would not have been able to publish conclusions supported by the academy's consensus of what is scientific under the grant and then "publish additional or contradictory findings on his own 'time and dime.'" R. at 19. This is incorrect. Petitioner was allowed to publish differing ideas in other channels and did so in *Ad Astra* without violating the parameters of the Grant. R. at 8 n.3. Delmont's condition did not force Petitioner to disavow the Charged Universe Theory but stated that his conclusions must conform to the academy's consensus of science. Petitioner chose a theory not within that consensus, so it could not be published under the Grant. He was free to publish the theory on his own "time and dime," but Petitioner's concern of "evident hypocrisy is ill-founded. R. at 19.

The hypocrisy would arise from the controversial nature of the Charged Universe Theory, not from scientific research published in Delmont Press under the Grant that conformed to the academy's consensus view. The consequences of his chosen theory were evident after his article in *Ad Astra* received negative feedback from the academy and the press. R. at 9.

3. The Grant advanced the Government's own message.

The Free Speech Clause protects private speech from government regulation, but review does not apply to government speech. *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009); *see Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 553 (2005) ("[T]he Government's own speech . . . is exempt from First Amendment scrutiny."); *see also Bd. of Regents of Univ. of Wis. Sys. v.*

Southworth, 529 U.S. 217, 235 (2000) (holding no free speech review when the government promotes policies aligned with its own agenda).

The science grant was not meant to "encourage a diversity of views from private speakers." *Finley*, 524 U.S. at 586. Delmont Press was to publish Petitioner's research. This gives the appearance that Petitioner acted as a conduit for Delmont's message. *Ad Astra* faced similar concerns with Petitioner's article but protected itself by adding an asterisk denoting non-endorsement of his religious research. However, Delmont faced a unique challenge because Petitioner was entangled with the University's resources. The condition was created because a simple asterisk would not insulate Delmont's reputation from damage.

Petitioner mischaracterized both *Rosenberger* and *Legal Servs. Corp.* by using them as support to say he was a private speaker conveying his own message.

In *Rosenberger*, the school funded student groups for them to create their own private message. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 822 (1995). However, the school denied funding to one group because their articles primarily promote religion. *Id.* at 827. The Court held that denying funds was unconstitutional because it denied the student groups their right to free speech. *Id.* at 837. The Court's decision hinged on the student organization's status as CIOs (Contracted Independent Organization). *Id.* at 835. The school stated these student groups were not "university agents, [were] not subject to its control, and [were] not its responsibility." *Id.* Therefore, messages conveyed by the student group were considered their own private message and not associated with conveying the school's message. *Id.*

Similarly, in *Legal Services Corp.*, the government provided funds to organizations that employed lawyers for free legal assistance to indigent clients. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 536 (2001). The condition in question denied funds to organizations if representation

involved a challenge to existing welfare laws. *Id.* at 537. The Court held the condition was unconstitutional since "the lawyer is not the government's speaker" because they "speak[] on behalf of his or her private . . . client." *Id.* at 542. The Court reasoned that viewpoint restrictions are proper when the government is speaking or funding a message it favors but not when the funds are "to encourage a diversity of views from private speakers." *Id.*

Rosenberger and *Legal Services Corp.* are distinguishable from the present case based on the speaker's status. The Court in *Legal Services Corp.* stated, " like the program in *Rosenberger*, the [Legal Services Corp.] program was designed to facilitate private speech, not to promote a governmental message." *Id.* The speakers in both cases were not conveying the government's message because they were too far removed to be associated. That is not the case here. Petitioner was chosen explicitly by Delmont to convey its own message relating to the Pixelian event. Therefore, the condition did not restrict Petitioner's speech; instead, Delmont decided to restrict its own speech by limiting what its chosen representative could publish.

B. Reasonableness Review Should Be Applied if This Court Finds the Grant's Condition Violated Petitioner's Free Speech Rights.

When free speech rights under the First Amendment are at issue, courts apply a three-step process. First, whether the speech restriction violated the speaker's rights is determined. Second, the standard of review is determined. Finally, the standard of review is applied. The nature of the forum and speech involved must be considered to determine the standard of review applied. For purposes of arguendo, if this Court determines Petitioner's free speech rights have been violated under step 1, the standard of review this Court should apply is reasonableness review.

Under Reasonableness review, the condition must be reasonably related to a legitimate government interest. A court applying this standard will balance the government's interest against

the burden a condition imposes. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). After doing so, it is evident that Delmont must prevail.

1. The University is considered a non-public forum.

The nature of the forum determines the amount of scrutiny a court will apply to a regulation. There are both public and non-public forums. Public forums, such as sidewalks and public parks, are traditionally viewed as open for the public's use. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Non-public forums include prisons, military bases, and universities limited to the public because the state may "reserve the forum for its intended purpose" if the restriction on speech is reasonable. *Id.* at 46. To decide if a forum is public or non-public, a court will consider the government's intent and whether the forum has been expressly or traditionally open to the public. *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 683 (1992). The government's intent for a forum can be seen in *Kokinda*.

The Court held a regulation to be constitutional that banned individuals from soliciting on the sidewalk outside the post office. *United States v. Kokinda*, 497 U.S. 720, 725 (1990). The Court reasoned that the sidewalk outside the post office was intended for post office access, not general public use. *Id.* The regulation was reasonable because solicitation would have disturbed the post office from conducting its intended business. *Id.* at 732–33.

Delmont has not expressly opened the University, the Grant Program, or the University of Delmont Press to the public. The Astrophysics Grant was a new program to be awarded to one person after a highly selective process. Additionally, publications are traditionally seen as non-public forums due to their editorial discretion. By creating the Grant's condition, Delmont reserved the forum to advance scientific research of the Pixelian Comet and become the leading center for

celestial study. Applying the standards in *Lee* and *Kokinda*, The University of Delmont will be considered a non-public forum.

2. The Grant's language makes it a content-based subject matter condition.

There are two content-based restrictions in a non-public forum like the University: viewpoint and subject matter. Viewpoint discrimination is subject to strict scrutiny review, while subject-matter discrimination is subject to reasonableness review. Subject-matter discrimination is when a topic is discriminated against without considering the speaker's views. *See Consol. Edison Co. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 537 (1980).

When a regulation or condition is not a view of the government but instead of a view of others, this Court has held that the condition is a subject-matter restriction. *See Boos v. Barry*, 485 U.S. 312, 319 (1988) (determining a statute to be a subject-matter restriction that prohibited placing signs close to a foreign embassy that brought the foreign government into "public disrepute"). Here, the condition does not support any viewpoint of Delmont but instead that of the academic community. Delmont is deferring to the subject of whatever the community's consensus view of science is. This is ever-changing as science is forever evolving.

Fraser classified the school's discipline of a student as subject matter and performed the reasonableness balancing test discussed. *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 681 (1986). In *Fraser*, a student gave a speech for student office nominations at a school-sponsored assembly. *Id.* at 677. The speech included "lewd" references such as "he's firm in his pants, he's firm in his shirt, his character is firm." *Id.* at 687. The student was suspended for three days. *Id.* at 678. The Court balanced "the undoubted freedom to advocate unpopular and controversial views in schools" against "society's . . . interest in teaching students the boundaries of socially appropriate

behavior." *Id.* at 681. The Court held that the school did not violate the student's free speech rights when it punished him. *Id.* at 685. Reasoning followed that the purpose of American public schools is to teach "habits and manners of civility," and permitting such subject matter of vulgar speech would "undermine the school's basic education mission." *Id.* at 681, 685.

Like *Fraser*, where the school banned all lewd and vulgar speech at sponsored events, Delmont's condition only allowed conclusions to be published within the academic community's consensus view. Delmont did not support one view over another regarding the Charged Universe Theory. Instead, the entire subject of science not approved by the academic community was banned. The subject of what was considered "weird science."

3. Delmont prevails under reasonableness review application.

After determining the condition to be a content-based subject-matter restriction within a non-public forum, the reasonableness standard of review must be applied. This Court should determine that the condition was constitutional and reasonably related to a legitimate interest by balancing Delmont's interest against the burden on Petitioner's free speech rights.

Delmont has multiple legitimate interests in this case. First, there was an interest in furthering the scientific study of an event that only occurs once in a lifetime. Any information that can be learned about the cosmos and astrological phenomena furthers the science community's understanding of the universe. Second, Delmont had an interest in becoming the leading center for celestial study. Delmont was under the telescope of the world and the press. This was an opportunity for Delmont to shine on the big stage, leading to more students wanting to study at the University, possible funding, and new prestige. Lastly, Delmont had a compelling interest in "addressing the public's confusion between science and religion." R. at 35. The Grant's condition was related to and furthered all of these interests, while Petitioner's research diminished them.

The academic community stated that the Charged Universe Theory was "unprovable from a scientific standpoint." R. at 8. The University's reputation was destroyed as they were now associated with "weird science." R. at 9. And the science of the event became entangled with the religious beliefs of Meso-Paganism. The only burden the condition imposed on Petitioner was that he could not publish his article in Delmont Press. He was able to gather all the data and information he needed through the program while still publishing in an outside publication. The condition's burden on Petitioner's free speech was small and significantly outweighed by Delmont's interests.

After Petitioner declined to align with the Grant's condition, Delmont had no option but to take the Grant away because publishing his conclusions would only lead to more backlash. Therefore, this Court should hold the condition as constitutional.

C. Even if This Court Applies Strict Scrutiny Review, Delmont Still Prevails.

If this Court determines the Grant's condition is a viewpoint discrimination restriction rather than subject matter, strict scrutiny will be applied. Under the strict scrutiny standard, the condition must be "narrowly tailored to serve compelling state interests." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992). The Fifteenth Circuit correctly held that the condition survives strict scrutiny.

1. Delmont's compelling interests justify the Grant's condition.

Delmont has two compelling interests with the Grant's condition. First, it addresses "the public's confusion between science and religion." R. at 35. Second, the condition prevents Delmont from violating the Establishment Clause.

Petitioner's research blends science and religion, which are fundamentally at odds. He is attempting to use his Meso-Pagan beliefs to answer scientific questions. Stating his religious belief that a "lifeforce" supports the highly controversial Charged Universe Theory discredits commonly accepted scientific theories. Allowing this blurs the public's perception of science and religion.

Using public funds to support Petitioner's religious conclusions would be viewed as the government supporting the Meso-Paganist religion. Delmont has an antiestablishment interest because "avoiding an Establishment Clause violation 'may be characterized as compelling,' and therefore may justify content-based discrimination." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001) (quoting *Widmar v. Vincent*, 454 U.S. 263, 271 (1981)).

2. The condition is narrowly tailored to further the compelling interest.

The condition of the Grant is narrowly tailored to advancing the interests mentioned because the only way to accomplish those interests would be to limit what Petitioner could publish under the Grant. Further, by limiting conclusions to conform with the academic community's consensus of what is scientific, there is no danger of blurring the line between religion and science. Therefore, not only is the condition narrowly tailored, but it is the only way to advance Delmont's interest.

Based on precedent, Delmont's condition did not violate Petitioner's right to free speech. The Grant's condition is not subject to First Amendment review, but if reasonable minds differ, Delmont will prevail under both reasonableness and strict scrutiny. Thus, this Court should affirm the Fifteenth Circuit's decision on the first issue.

II. THE FIFTEENTH CIRCUIT CORRECTLY HELD THAT SUPPORTING PETITIONER'S RELIGIOUS RESEARCH AND SAGE APPLICATION WOULD VIOLATE THE ESTABLISHMENT CLAUSE DUE TO SUBSIDIZING THE MESO-PAGANIST RELIGION.

This Court has stated that the Establishment Clause prevents the "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 668 (1970). "Congress shall make no law respecting an establishment of religion . . . ." U.S. Const. amend. 1.

Justice Black stated in *Everson,* "The establishment . . . clause means at least this: Neither a state nor the Federal Government . . . can pass law which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947). He continued that "[n]o tax in any amount, large or small, can be levied to support any religious activities" and that the Establishment Clause "was intended to erect a wall of separation between church and State." *Id.* at 16 (internal quotation marks omitted).

Delmont's funding of Petitioner's religious research through the Astrophysics Grant violated the Establishment Clause, as it effectively subsidized Meso-Paganism over other religions. This Court should uphold the Fifteenth Circuit's decision and defer to the University's decision in advancing its interests.

A. The Establishment Clause Was Implicated Once the Astrophysics Grant Was Used for Religious Purposes.

The Grant's condition stated that conclusions must have scientific community support. Using the Grant for religious conclusions in support of Petitioner's Sage application violated the Establishment Clause. The wall that separated church and state was demolished by the district court, repaired by the circuit court, and is now in the hands of this Court.

1. Establishment Clause violations hinge on the purpose for which funds are used, not the status of the recipients.

Petitioner attempts to draw comparison to a trio of cases—*Espinoza*, *Comer*, and *Carson*. However, this comparison falls short because these cases draw a line in the sand limiting violations of the Establishment Clause to the intended use of a government grant.

In Espinoza, the state enacted a scholarship program for private school students. *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2251 (2020). The state created a provision that these

scholarships could not be used at religious schools. *Id.* The Court held the rule was unconstitutional because once the state decided to give scholarships to private school students, it could not "discriminate against schools . . . based on [their] religious character." *Id.* at 2260.

In *Comer*, the state offered grants "to help public and private schools, nonprofit daycare centers, and other nonprofit entities" buy "playground surfaces made from recycled tires." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 452 (2017). Trinity applied for the grant to resurface the playground in its preschool and daycare but was denied because of its status as a church. *Id.* at 454. The Court held that the state could not deny the benefit because it forced Trinity to choose between public funds or remaining a church. *Id.* at 465.

Lastly, the state created a tuition assistance program in *Carson* for parents to send their kids to school. *Carson v. Makin*, 142 S. Ct. 1987, 1993 (2022). Under the program, tuition payments are sent to the chosen school so long as it was not a religious school. *Id.* at 1994. The Court held that the state's "nonsectarian" requirement for "its otherwise generally available tuition assistance payments" did not violate the Establishment Clause. *Id.* at 2002.

In all three cases, the Establishment Clause was not violated because the use of the funds is more important than the nature of the organization receiving it. In *Espinoza* and *Carson*, the funds were for tuition payments. In *Comer*, the funds were to resurface a playground. None of the funds described in the Trio of cases advanced or favored one religion over another and, therefore, did not violate the Establishment Clause.

This is distinguishable from the present case because the Astrophysics Grant was being used by Petitioner to directly advance religious research for his interest in becoming a sage in his Meso-Paganist faith. A specific religion would have been subsidized if Delmont continued funding his

research through the Grant. In turn, subsidizing the Meso-Paganist religion would appear to prefer it over all other religions, "establishing" an official governmental religion.

Further precedent lends additional support in *Mitchell*, where this Court emphasized that aid given to religious programs must not be religious in nature. *Mitchell v. Helms*, 530 U.S. 793, 820 (2000). The Grant recipient's status is irrelevant so long as they advance the government's secular purpose. *Id.* at 827. In this case, Delmont's secular purpose was to support scientific research on the Pixelian event and become the leading center for celestial study. However, Petitioner misused the Grant for religious purposes, which would have violated the Establishment Clause had Delmont's support continued.

2. States may deny funding to those who intend to pursue a religious degree.

Espinoza, *Comer*, and *Carson* provided a line of cases showing when the Establishment Clause was not violated but does not give this Court much clarity because the present case offers distinguishable facts. However, *Locke* provides guidance on when government funds are misappropriated in violation of the Establishment Clause, as is the case before this Court.

In *Locke*, the state offered scholarships to students with the condition that the funds were not used to pursue degrees "devotional in nature or designed to induce religious faith." *Locke v. Davey*, 540 U.S. 712, 716 (2004). A student lost their scholarship for pursuing a theology degree due to the state's concern about violating the Establishment Clause by funding clergy. *Id.* at 717, 22 The Court agreed, reasoning that since our country's founding, there have been uprisings against using taxpayer funds to support church leaders, a hallmark of an "established religion." *Id.*; *see Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct 2407, 2428 (2022) (replacing *Lemon* test by looking at historical practices for Establishment Clause interpretation). The Court upheld the condition as constitutional

because the state simply chose not to fund a specific type of instruction. *Locke*, 540 U.S. at 721, 725. The Court stated that training for congregational leadership is inherently religious and majoring in theology combines religious vocation with academic study. *Id.* at 721.

Delmont revoked the Grant to avoid using public funds sourced from American taxpayers to subsidize the Meso-Paganist faith, which would violate the Establishment Clause. Similar to *Locke*, where a student intended to pursue a religious degree, Petitioner intended to publish religious research as a requirement to become a First Order Sage, a leadership position within his religion, akin to a clergy member. R. at 57.

To become a Sage in Meso-Paganism, an "approved scholarly work on the lifeforce" is a prerequisite. *Id.* Petitioner has dreamed about becoming a Sage since he was a teen, and when the stars aligned, he thought the Grant would be "useful" in exploring personal growth in his faith. *Id.* Petitioner did not accept the Grant to research scientific possibilities of the Pixelian Comet that conformed with the academic community's views.

The student in Locke "was not denied . . . [funds] because of who he *was*; he was denied . . . [funds] because of what he proposed *to do*." *Comer*, 582 U.S. at 464. The Court's decision in *Locke* is on point. Therefore, Delmont had an antiestablishment interest in not funding the Meso-Paganist religion.

B. The Free Exercise Clause Is Entangled with the Establishment Clause but Is Not an Issue This Court Needs to Determine.

When addressing Establishment Clause issues, it is important to note that this Court has identified that "the Establishment Clause and the Free Exercise Clause are frequently in tension" because "there is room for play in the joints between them." *Locke*, 540 U.S. at 718. The tension warrants a brief discussion of the Free Exercise Clause.

The Free Exercise Clause "protect[s] religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status." *Comer*, 582 U.S. at 458. However, this Court clarified that the Free Exercise Clause is only implicated when a "generally available benefit" open to the public has been denied based on "religious identity." *Id.*

There are two reasons why this Court does not need to address a Free Exercise Clause issue. First, a violation of the Free Exercise Clause is not an issue presented before this Court by Petitioner. Second, precedent clarifies that the Free Exercise Clause is only an issue when the government denies a benefit generally available to the public. The Astrophysics Grant was not generally available to the public.

Applications for the Grant were open to the public, but the program involved a highly selective process. Once a candidate was chosen, the Grant and its benefits were only available to the recipient. Therefore, when Petitioner attempted to violate the Grant's condition with religious conclusions, Delmont did not violate his free exercise of religion by terminating the Grant.

C. University Decisions Deserve Deference from the Judiciary to Operate Efficiently.

An essential aspect of academic freedom is "judicial deference to the expertise of the university when it makes academic judgments." Paul Horwitz, Fisher, *Academic Freedom, and Distrust*, 59 Loy. L. Rev 489, 497 (2013). For the University to operate efficiently, this Court should respect the decisions made in furtherance of its educational mission. Educational judgments are "primarily within the university's expertise." *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (holding the Court has a tradition of giving deference to a university's "academic decisions").

The University of Delmont established the Astrophysics program to help achieve its goal of becoming the foremost center for celestial study. To accomplish that goal, the University was required to make decisions such as candidate criteria, how to award the grant, the limits, conditions, and ultimately terminating the Grant to safeguard its reputation. Courts are not equipped to make those kinds of decisions. Nor should the courts "question the right of the University to make academic judgments as to how best allocate scarce resources." *Widmar*, 454 U.S. at 276. The Astrophysics Grant was a limited resource intended to achieve a narrow purpose. This Court should uphold the Grant's condition because the University specifically decided to advance the program's purpose and not violate the Establishment Clause.

Additionally, the University removed the Grant from Petitioner to protect its reputation and funding sources due to negative implications. The decision was based on two factors. First, other schools publishing religious research in scientific journals resulted in those schools being labeled as religious institutions by the public. R. at 53. However, the University aimed to maintain its status as a "purely academic institution" and achieved this by conditioning the Grant on conclusions conforming with the academy's majority view. *Id.* If the Court deems this condition unconstitutional, it would undermine the Grant's academic purpose, which is best determined by the University itself.

Second, The University's decided to terminate the Grant based on past negative experiences. They had previously given a private grant to their Anthropology Department, which produced religious conclusions and damaged the department's reputation. *Id.* This impact still lingers today. To prevent a similar situation with the Astrophysics Department, the University revoked Petitioner's publicly-funded Grant when they learned of his intent to publish religious conclusions, even after offering him a chance to comply with the Grant's condition.

History and tradition help this Court determine whether the Establishment Clause has been violated. A gaze into the past shows that government funds cannot be used for religious activities or to advance an individual's role within a religion. Doing so would take the effect of the government subsidizing, endorsing, and establishing a religion. Delmont's antiestablishment interest led to the Grant's condition and the termination of Petitioner's role.

Delmont consciously decided to prevent its program from violating the Constitution by terminating Petitioner's Grant. A decision that this Court owes deference. Therefore, this Court should affirm the Fifteenth Circuit's decision on the second issue.

CONCLUSION

For the foregoing reasons, the Grant's condition is constitutional and does not violate Petitioner's First Amendment Free Speech rights. Further, deference is warranted to Delmont's academic decision not to violate the Establishment Clause by subsidizing Petitioner's Meso-Paganist religion. Therefore, this Court should affirm the Fifteenth Circuit Court of Appeals' decision on both issues presented.

Respectfully submitted,

/s/ **Team 4**

COUNSEL FOR RESPONDENTS

BRIEF CERTIFICATE

Team 4, Counsel for Respondents, hereby certifies compliance with the requirements of Rule IV(C)(3) of the 2023–24 Seigenthaler-Sutherland Moot Court Competition Official Rules in that:

1. The work product contained in all copies of Team 4's brief is, in fact, the work product of the team members;
2. Team 4 has complied fully with our law school's governing honor code; and
3. Team 4 has complied with all Competition Rules.

Respectfully submitted,

/s/ **Team 4**

COUNSEL FOR RESPONDENTS

APPENDIX TABLE OF CONTENTS

Page

APPENDIX "A"

CONSTITUTIONAL PROVISION

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.

APPENDIX "B"

STATUTORY PROVISION

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; . . . .