No. 23-CV-1981

In The

Supreme Court of the United States

NICHOLAS COOPER,

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

Team 6

Attorneys for Respondents
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QUESTIONS PRESENTED

I. Under the Free Speech Clause, does a government subsidy impose unconstitutional conditions on a recipient when it establishes a grant for a scientific study and chooses to exclude religious conclusions from the grant's use?

II. Does a final report from a state-funded scientific research study violate the Establishment Clause when the study's principal investigator proposes conclusions that support a religious theory, and that investigator wants to use the study to bolster his position as a clergyperson in that religion?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Circuit Court Cases

Constitutional Provisions

JURISDICTIONAL STATEMENT

This is a direct appeal from a dispositive order in a civil case alleging error in a grant of summary judgment for the State of Delmont and Delmont University. R. at 59–60. The United States Court of Appeals for the Fifteenth Circuit had jurisdiction under 28 U.S.C. § 1291. The Court of Appeals for the Fifteenth Circuit issued its opinion on March 7, 2024. R. at 32. Appellant Nicholas Cooper filed a timely Petition for a Writ of Certiorari, which was granted. R. at 59–60. This Court has jurisdiction over this appeal under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. The Observatory and the Grant.

Delmont University invested in a brand-new, world-class GeoPlanus Observatory for students and researchers to study significant astrophysical events. R. at 4. One such event is the Pixelian Event, which only occurs once every ninety-seven years. R. at 5. The State of Delmont seized the opportunity to promote its investments into its astrophysics program during the Pixelian Event excitement. R. at 5, 52.

Respondents—the State of Delmont and Delmont University ("the University")—funded an Astrophysics Grant ("the Grant") for: (1) a Principal Investigator; (2) research assistants; (3) incidental costs associated with the study; (4) use of the University's facilities; and (5) costs of publishing "scientific, peer-reviewed articles related to [the] event, publication of a final summative monograph of the event, and [] creation of a public dataset that [would] include the raw data upon which the conclusions were reached" ("the Final Report"). R. at 1–2. The University's Delmont Press would publish the Final Report. R. at 5. From its inception, the Grant emphasized its purpose: to give the University's new GeoPlanus Observatory "a momentous debut on the scientific stage" amidst the Pixelian Event. *See* R. at 9, 53. Learning from a past

experience in which a grant recipient "championed dubious religious positions" that harmed the entire department, the University limited the Grant to only render and publish conclusions aligned with the academic community's consensus view of a scientific study. R. at 5, 53.

II. Dr. Cooper inspires controversy.

The study's Principal Investigator, however, had other conclusions in mind. The University's hire, Petitioner Dr. Nicholas Cooper, is an astrophysicist and aspiring Sage in the Meso-Pagan faith. R. at 56–57. After Dr. Cooper published a controversial article in *Ad Astra* arguing that the Pixelian Event might support tenants of his Meso-Pagan faith, the University faced media attacks, embarrassment from donors, and criticism from the scientific community. R. at 9. The University was even mocked on late night television. Id. The University grew concerned about what "medieval," "early alchemist," "weird science" theories the University would be publishing when the University Press published the Final Report in a few months. R. at 8–9.

Specifically, Dr. Cooper's *Ad Astra* article wrote that his observations during the Pixelian Event aligned with observations from "Meso-American indigenous tribes within their ancient religious history." R. at 6–7. Dr. Cooper speculated about Meso-American hieroglyphs: that the hieroglyphs could be primitive depictions of a previous Pixelian Event, that researchers should re-consider the accepted date for these hieroglyphs, and that the hieroglyphs might depict the electrical interplay that Meso-Pagans call "lifeforce." R. at 7, 57. He also suggested that the Pixelian Event showed "interaction among electrical currents, filaments, atmospheres, and formations of matter that appear[] consistent with the Charged Universe Theory." R. at 7. The Charged Universe Theory is highly controversial; it strays from the scientific academy's consensus. Id. Dr. Cooper teased that the Final Report might confirm these speculations. *See* R.

at 8. *Ad Astra*, concerned with being perceived as endorsing Dr. Cooper's "extreme view," published the article with a qualification that it did not endorse Dr. Cooper's "unsupported" theories and the hieroglyphs and Meso-Pagan foundational texts were "religious in nature, not empirical." Id.

Dr. Cooper hoped that the Pixelian Event research would confirm his personal Meso-Pagan beliefs. Id. Sages are clerical leaders in the Meso-Pagan faith who study cosmos and interpret ancient hieroglyphs. R. at 56. Dr. Cooper believes that the Pixelian Event research will "make [him] a competitive candidate for designation" as a Sage, since publishing and defending "an approved scholarly work" on the lifeforce is the kind of "scholarly pursuit[]" that is a "prerequisite[] to becoming a Sage." R. at 57.

Following the *Ad Astra* article controversy, the University asked Dr. Cooper to confirm his commitment to the terms of the Visitorship. R. at 10–11. The University encouraged Dr. Cooper to publish whatever he wishes. Id. But per the terms of the Visitorship, the University's Final Report must "conform to the academic community's consensus view of a scientific study." Id. Cooper twice refused. Id. In response, the University denied Cooper access to the GeoPlanus Observatory to protect the Grant's purpose. Id.

III. Procedural History

This suit ensued. Dr. Cooper argues that the University violated his First Amendment right to Free Speech. The University counters that, to the contrary, the University could not have permitted Dr. Cooper to publish his religious conclusions under the Establishment Clause. Ruling on cross-motions for summary judgment, the District Court of Delmont granted summary judgment in favor of Dr. Cooper. R. at 30–31. The Fifteenth Circuit reversed, granting summary judgment for the University. R. at 50–51. Dr. Cooper then filed this appeal. R. at 59–60.

SUMMARY OF THE ARGUMENT

This case is about the government's ability to define the scope of academic work it wishes to financially support. Some subjects and conclusions must fall outside that scope. Here, the University sought to fund a scientific study that would promote its astrophysics program and study the Pixelian Event according to the academic community's consensus view of a scientific study. It did not seek to fund religious theories, nor exacerbate public confusion about science and religion. It did not seek to fund the application materials of an aspiring clergyperson. The University believes that strong separation between public funds and faith activity best preserves both educational autonomy and religious liberty.

To begin, the University's Final Report constitutes government speech. Therefore, strict scrutiny does not apply, since the government can control the viewpoint expressed by its own speech. Dr. Cooper contributed to the study and the Final Report in his official capacity as the study's Principal Investigator. As government speech, the University can decide what it wants to say.

In the alternative, even if the Final Report is government funded private speech, the government can choose what activities to fund and the scope of that funding. The conditions of the Grant are constitutional under the unconstitutional conditions doctrine. First, the Visitorship terms are viewpoint neutral because they limit the subject matter of the Final Report, not the viewpoint of Dr. Cooper. Moreover, the condition passes strict scrutiny because it serves the compelling state interest of addressing public confusion of science and religion. This condition is narrowly tailored because it only proscribed religious conclusions published under the Grant and Dr. Cooper could publish additional conclusions independently. Second, the condition was not a penalty because the University was merely choosing to promote one activity over another. Third,

the condition was not coercive because the condition only reached speech within the scope of the state program and Dr. Cooper could publish his religious conclusions separately without contradiction. Finally, the government was not seeking to suppress dangerous ideas by choosing only to fund a scientific study that conformed to the academy's consensus view on scientific.

Lastly, the Establishment Clause prevents the University from funding Dr. Cooper's religious conclusions. States have a substantial historical interest in refusing to fund clerical training. Here, Dr. Cooper intends to use this research to advance his religious position. The University can choose not to fund this initiative.

For the foregoing reasons, Respondents respectfully ask this Court to affirm the Fifteenth Circuit's grant of summary judgment for the University.

ARGUMENT

I. Under the Free Speech Clause, the University can limit its Grant to research that conforms with academic consensus. The Final Report is government speech and the conditions of the Grant are constitutional.

This case is about a University's discretion to define the scope of the research that it funds. The study and Final Report are government speech. Alternatively, if this Court finds that the Final Report is private speech, then the Visitorship terms (1) do not create an unconstitutional condition on speech, and (2) pass strict scrutiny analysis.

a. The Final Report constitutes the University's speech, not Dr. Cooper's.

The Final Report constitutes government speech; thus, the Visitorship terms cannot offend the First Amendment. *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1589 (2022). A University employee publishing scientific conclusions about University-funded research in a University's publication is the University speaking. Dr. Cooper does not have boundless authority to publish whatever he wants under the auspices of, and at the expense of, the University. When the University speaks, it can choose what it wants to say.

i. Dr. Cooper contributed to the Final Report in his official duties as Principal Investigator.

The University can decide what viewpoints it wants to share; as here, the University wants to align itself with the scientific consensus. "[I]mposing a requirement of viewpoint-neutrality on government speech would be paralyzing. When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others." *Matal v. Tam*, 582 U.S. 218, 235 (2017). In choosing what research it wants to fund and publish, the University must articulate what research would be outside the scope of its intended message.

Dr. Cooper produced government speech by acting within his official duties as the study's Principal Investigator. "[W]hen public employees make statements pursuant to their official

duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). When a public employee speaks pursuant to his official duties, then "that kind of speech is—for constitutional purposes . . . —the government's own speech." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2423 (2022); *Bd. of Regents v. Southworth*, 529 U.S. 217, 229 (2000). Here, the University, not Dr. Cooper, communicates a message.

For example, in *Kennedy v. Bremerton School District*, a football coach did not communicate government speech when he engaged in private prayer at the 50-yard line after football games. 142 S. Ct. at 2415–16. In those moments of prayer, the coach was not speaking in accordance with an official district policy, he was not conveying a government message, and he was not producing speech that the district "paid him to produce as a coach." *Id*. at 2424. Significantly, circumstances indicated that coaches were free to tend to other personal matters during those postgame minutes. *Id.* at 2425. On the other hand, in *Garcetti v. Ceballos*, a prosecutor acted within his "official duties" when he prepared a memorandum detailing his concerns about discrepancies in a warrant affidavit. 547 U.S. at 413. The prosecutor's speech "owe[d] its existence" to his official duties to the public employer. *Id.* at 421. Therefore, his speech was government speech.

Here, Dr. Cooper conducted the study and prepared the Final Report in his official duty as the study's Principal Investigator. This case is distinguishable from *Bremerton* in all ways that matter. In *Bremerton*, the coach was not engaging in government speech since he was not acting in his official duties as a coach during the postgame minutes. Here, the Final Report would have communicated the University's investment in the GeoPlanus Observatory. The Final Report

would be published by the University's Press. The Visitorship terms expressly stated these duties. And the scientific community and the public understood Dr. Cooper to be conveying the University's message. Unlike the coach in *Bremerton*, Dr. Cooper was "paid to produce" this speech. 142 S. Ct. at 2424. Dr. Cooper's speech "owe[d] its existence" to the Grant. *Garcetti*, 547 U.S. at 413. Through the study and the Final Report, Dr. Cooper acted on behalf of the University within his official duties as Principal Investigator.

Further, Dr. Cooper was not free to publish any non-religious personal speech in the Final Report. In *Bremerton*, during the brief postgame period, the coach was permitted to "speak with a friend, call for a reservation at a restaurant, check email, or attend to other personal matters." 142 S. Ct. at 2415–16. He just could not publicly pray. *Id*. This option for the coach to tend to personal matters indicated that he was acting in his personal capacity, not his official duty, when he briefly prayed after games. *Id.* at 2424. So, the coach's prayer was not government speech. *Id.* In contrast, here, Dr. Cooper would not be permitted to use the Final Report to express non-religious personal views. Dr. Cooper could not use that space and the University's platform to write a letter to a friend or share a restaurant review. Therefore, contributing to the Report falls within Dr. Cooper's official duties as Principal Investigator. The Final Report is the University's speech, not Dr. Cooper's.

ii. Academic freedom does not give Dr. Cooper free reign.

Government speech does not become private speech just because it occurs in an academic context. *Garcetti* leaves open the possibility that the official duties analysis may change in an academic setting. 547 U.S. at 425. But that concern is not dispositive here. Circuit precedent suggests that government speech remains government speech in an academic setting, even when the academic speech pertains to private interests or when the content is unrelated to the researcher's subject matter. *Hardy v. Jefferson Cmty. College*, 260 F.3d 671, 678 (6th Cir. 2001)

(applying *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968)) ("[C]ontroversial parts of speech advancing only private interests do not necessarily invoke First Amendment protection.") (internal quotation omitted); *Piggee v. Carl Sandburg College*, 464 F.3d 667, 671 (7th Cir. 2006) (applying *Garcetti*, 547 U.S. 410) ("No . . . university is required to allow a chemistry professor to devote extensive classroom time to the teaching of James Joyce's demanding novel *Ulysses*[.]"). Academic freedom does not give Dr. Cooper blanket permission to publish unrelated conclusions for his private benefit under the auspices of the University's name and funding. Rather, the University must have discretion to dictate the boundaries of the work it financially supports.

The Final Report constitutes government speech, not Dr. Cooper's speech. The University can choose to fund academic studies that "conform to the academic community's consensus view of a scientific study." R. at 10. In contributing to the Grant's study and Final Report, Dr. Cooper acted within his official duties to produce government speech. *Garcetti*'s official duties analysis still applies, even in an academic context. In sum, the Final Conclusions Report is government speech, so the University's Visitorship terms are not subject to First Amendment protection against viewpoint discrimination.

b. The Grant condition is not an unconstitutional condition because the University was merely defining the limits of its program and the Visitorship terms did not compel the recipient's speech.

The government may choose what activities to subsidize, and it has no obligation to fund all protected activity. *See Rust v. Sullivan*, 500 U.S. 173, 194 (1991). Under the unconstitutional conditions doctrine, which governs a line of government subsidy cases, the government may not condition funding in a way that infringes on First Amendment rights. *Rumsfeld v. F. for Acad. & Instit. Rts., Inc.*, 547 U.S. 47, 59 (2006) (citing *United States v. Am. Library Ass'n*, 539 U.S. 194, 210 (2003)). Under the First Amendment, made applicable to the states by the Fourteenth

Amendment, the Free Speech Clause prohibits the state from making any law "abridging the freedom of speech." U.S. CONST. amend. I; *Gitlow v. New York*, 268 U.S. 652, 666 (1925). The Court has outlined four ways in which conditioning is unconstitutional: (1) the condition discriminates on the basis of viewpoint; (2) the condition operates as a penalty on non-subsidized speech; (3) the condition amounts to coercion; and (4) the government seeks to suppress dangerous ideas. *See Rust*, 500 U.S. at 192. The government does not offend these principles when it funds one activity at the exclusion of another and defines the scope and limits of its subsidies. *See id.* at 193. As the University's Grant is constitutional under this doctrine, had Dr. Cooper still opposed the reasonable conditions of the grant, his appropriate recourse was to decline the funds. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013).

i. The University did not engage in viewpoint discrimination and the funding condition passes strict scrutiny.

The Visitorship terms were viewpoint neutral and are narrowly tailored to further a compelling government interest of addressing public confusion of science and religion. "When the Government appropriates public funds to establish a program it is entitled to define the limits of that program." *Rust*, 500 U.S. at 194. However, the government may not discriminate based on viewpoint when conditioning funding. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). The government engages in viewpoint discrimination "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject[.]" *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (holding that a university engaged in viewpoint discrimination when it made a government fund available to all student organizations except religious organizations). But the government "can, without offending the Constitution, selectively fund certain programs to address an issue of public concern, without funding

alternative ways of addressing the same problem." *Agency for Int'l Dev.*, 570 U.S. at 217. When a funding condition seeks to regulate pure speech, strict scrutiny applies. *R. A. V. v. City of St. Paul*, 505 U.S. 377, 395 (1992).

1. The conditions of the Grant are viewpoint neutral.

The government does not engage in viewpoint discrimination when the government chooses "to fund one activity to the exclusion of the other." *Rust*, 500 U.S. at 193. In *Rust*, the government disallowed the use of government funds to engage in abortion-related speech. *Id.* at 177–78. When the government chose not to fund a particular subject matter, it did not discriminate against a viewpoint because the condition was placed on the government program itself, not the recipient nor his specific viewpoint. *Id.* at 198–99. The Court further reasoned that: "To hold that the Government unconstitutionally discriminates on the basis of viewpoint when it chooses to fund a program dedicated to advance certain permissible goals, because the program in advancing those goals necessarily discourages alternative goals, would render numerous Government programs constitutionally suspect." *Id.* at 194. Thus, the government may choose not to fund a category of speech and remain viewpoint neutral.

The University's funding condition was viewpoint neutral. When the University limited the grant to only a scientific study, it defined the scope of the Grant based on subject matter, not viewpoint. Like the funding in *Rust*, here, the Grant was limited to only scientific speech and excluded all other subject matter outside of this scope. The Grant did not discriminate against religious viewpoints by choosing to fund one type of speech, a scientific study. Had the recipient of the Grant wished to write a song about the wonders of the Pixelian Event or a fictional story depicting its imagined origins, the Grant would have precluded such activity. In this way, the University has chosen to fund one activity at the exclusion of others, and doing so cannot equate

to viewpoint discrimination. As the Court warned in *Rust*, finding otherwise "would render numerous Government programs constitutionally suspect." *Id.*

Moreover, the University's Grant is not comparable to the unconstitutional funding conditions in *Rosenberger*. In *Rosenberger*, the Court found that the university was engaged in viewpoint discrimination when the university permitted all protected activity under the funding except for activity with a religious viewpoint. 515 U.S. at 829. There, the university singled out religious activity and treated that viewpoint differently than all other viewpoints. *Id.* In contrast, the University's Grant does not say that the study is open to all activity except for religion. Instead, it merely delineates the purpose and scope of a narrow grant. The University does not require that the recipient of the Grant conform to a particular viewpoint or abstain from a different viewpoint. Instead, like the government in *Rust*, the University acted in a viewpoint neutral manner by choosing to fund one activity and not another.

2. The funding condition passes strict scrutiny.

The University maintains that the Final Report is government speech and publishing Dr. Cooper's Charged Universe Theory would violate the Establishment Clause. However, even if strict scrutiny applies because the Grant directly regulates speech, the Visitorship terms pass strict scrutiny.

When the government seeks to directly regulate speech, the regulation must pass strict scrutiny. *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358 (2009). Under strict scrutiny, the University must have a compelling interest in support of its condition, and it must be narrowly tailored to achieve that interest. *R. A. V. v. City of St. Paul*, 505 U.S. at 395. Funding conditions are constitutional when they place restrictions on the government program and not the recipient, and the recipient may still engage in the unfunded activity independently. *Rust*, 500 U.S. at 198–99; *Regan v. Tax'n with Representation*, 461 U.S. 544, 546 (1983) (holding that the government

did not infringe on First Amendment rights when it chose not to subsidize lobbying and recipients could engage in lobbying through a separate affiliate.); *FCC v. League of Women Voters*, 468 U.S. 364, 400–01 (1984) (finding that the funding condition was unconstitutional when it prohibited recipients from engaging in editorializing even through a separate affiliate). A condition is narrowly tailored when there are no "adequate content-neutral alternatives." *R. A. V. v. City of St. Paul*, 505 U.S. at 395.

First, the University established the Grant condition to further the compelling government interest of addressing public confusion between religion and science. While religious theory can vary among different faiths, scientific studies, as defined by the academic consensus, is meant to support empirical data that can be trusted by people of all backgrounds. Furthermore, the intermingling of science and religion can lead to the public's harmful distrust of science. The potential consequences of this confusion are evidenced by the University's past experience as well as other institutions that allowed religious studies to be published in scientific journals. R. at 53. The mixed religious and scientific studies altered the University's public image, created doubt about the quality of the scientific departments, and further exacerbated the public's confusion. R. at 54.

Second, the condition is narrowly tailored because the restriction was placed only on the Grant publication and not the recipient. In *Rust*, the Court upheld a funding condition which directly prohibited speech-related conduct because it was placed only on the recipient. 500 U.S. at 198–99. There, the recipient was able to engage in the nonfunded speech so long as it did so without using the government funds. *Id.* In contrast, in *League of Woman Voters*, the Court applied strict scrutiny and invalidated a condition when the recipients were unable to engage in the nonfunded speech independently. 468 U.S. at 400. Here, the University prohibited religious

conclusions in the Final Report, but encouraged Dr. Cooper to publish his religious theories independently. The funding condition was placed only on the state's program, not Dr. Cooper, and is narrowly tailored as illustrated by *League of Women Voters*.

Finally, the condition is not underinclusive by allowing the petitioner to publish his work independently. The government interest is not suppressing all religious speech or religious theories connected to scientific advancements, it is only preventing public conflation of science and religion. This issue would be exacerbated by a public University, identified by the public as "non-religious," publishing a seemingly scientific study with religious themes. Because of the context of the University's publication and support through the Visitorship, the government funded publication has a greater likelihood of contributing to public confusion than an independent publication by one individual. This scenario further illustrates that there are no adequate content-neutral alternatives. As the risk of greater public confusion of science and religion is so intertwined with the identity of the public University and their publications, the limitation on the Grant is necessary to further the compelling interest.

ii. The University did not impose a penalty on Dr. Cooper's speech when it chose to fund scientific research at the exclusion of another activity.

The government does not impermissibly compel speech nor impose a penalty on speech when it chooses to fund one activity at the exclusion of another. *See Harris v. McRae*, 448 U.S. 297, 300 (1980)*; see also Am. Library Ass'n*, 539 U.S. at 212. The government may not condition a government benefit to penalize protected speech and compel speech which it could otherwise not command directly under the First Amendment. *Speiser v. Randall*, 357 U.S. 513, 526 (1958). However, the government may encourage one protected activity over another, *Maher v. Roe*, 432 U.S. 464, 475 (1977), and promote an activity "within the sphere of government

concern." *Speiser*, 357 U.S. at 527. The "refusal to fund protected activity" alone is not "the imposition of a 'penalty' on that activity." *McRae*, 448 U.S. at 300.

Limiting a government subsidy to particular subjects and denying the subsidy to fund speech on other subjects is not the imposition of a penalty. *See Am. Library Ass'n*, 539 U.S. at 212. In *American Library Association*, the Supreme Court upheld a government subsidy available to libraries conditioned on limited internet access. *Id.* Libraries were required to implement a policy of internet safety and install software to filter out obscene, pornographic, and other harmful materials to receive the subsidy. *Id.* at 201. This condition required that recipients conform their speech to certain approved subjects and denied funding to libraries that chose not to abide with it. *See id.* The Court held that the refusal to extend government funding to internet access of obscene material was not "the imposition of a 'penalty' on that activity." *Id.* (quoting *McRae*, 488 U.S. at 317, n. 19). The Court noted that libraries were free to choose to offer unlimited internet access if they wished to do so without the aid of the government subsidy. *Id.*

The University did not penalize Dr. Cooper's religious beliefs, nor his conclusions about Meso-Paganism. Like the subsidy in *American Library Association* which funded certain subject matter, the University chose to fund scientific research which conformed to the academy's consensus view of a scientific study with the creation of the Grant. Just as the government chose only to fund internet access of child-friendly materials, the University chose only to fund a scientific study on the Pixelian Event. By choosing not to fund one protected activity over another, the University has not imposed a penalty on that activity as established in *McRae* and illustrated by *American Library Association.*

Furthermore, choosing to define a scientific study as one that conformed with the academy's view of scientific was "within the sphere of government concern." *See Speiser*, 357

U.S. at 527. A clearer definition of scientific study is still dictating the scope of the state program and does not change the analysis. In *American Library Association*, the government sought to promote internet safety within the sphere of government concern and clearly defined internet safety as filtering access to obscene and pornographic material. *See id.* at 201. Here, the University sought to fund a scientific study to promote scientific research of a monumental astrophysical event and address public confusion between religion and science. To address this government concern, like *American Library Association*, the University provided a clear definition of this policy by limiting the scientific study to one that conforms to the academy's consensus view. Thus, the funding condition is not a penalty on studies outside of the academy's consensus view of a scientific study, but instead a manifestation of the government's concern and the appropriate limits of the subsidy.

iii. The Grant condition did not amount to coercion.

The University did not coerce Dr. Cooper's activity because Dr. Cooper was permitted to publish his Charged Universe Theory independently and doing so did not require him to contradict himself. A funding condition is not coercive if it helps "specify the activities [the government] wants to subsidize" instead of reaching speech outside of the government program. *Agency for Int'l Dev.*, 570 U.S. at 214–15. The government reaches speech outside of the government program when it requires the "recipient to adopt a particular belief as a condition of funding." *Id.*, at 218. However, the condition is not coercive when the recipient is free to engage in the non-subsidized speech independently, so long as it does not require the recipient to directly contradict themselves. *Regan*, 461 U.S. at 545; *see also Agency for Int'l Dev.*, 570 U.S. at 219.

As illustrated by the different outcomes in *Regan* and *Agency for International Development* ("*AOSI*"), a funding condition is not coercive when the recipient can independently engage in the nonfunded activities. In *Regan*, the Court upheld a funding condition which

prohibited recipients from using government funds to engage in lobbying activities. 461 U.S. at 544–45. Recipients were allowed to create an affiliate organization to engage in lobbying. *Id.* This created a "dual structure" where recipients kept the nonfunded speech separate from the government funding. *Id.* By allowing recipients to engage in the proscribed activity independently from the government funding, the funding condition was not coercive.

In contrast, funding conditions are coercive when they affect protected speech outside of the scope of the government program and require the recipient to contradict their independent speech. *See Agency for Int'l Dev.*, 570 U.S. at 218. In *AOSI*, the funding condition required recipients to adopt the government's view on eradicating sex trafficking and prostitution. *Id.* The Court found that by requiring the recipient to adopt a particular view, the condition went beyond defining the scope of the federal program and began to "defin[e] the recipient." *Id.* Although recipients could express opposite views through affiliate organizations, the dual structure solution was insufficient to save the condition in this case. *Id.* at 219. In *AOSI*, the recipients could abide by the funding condition and espouse a contrary belief independently "only at the price of evident hypocrisy." *Id.* Thus, the funding condition was impermissibly coercive because it required recipients to adopt a particular belief and the recipients could not profess their own separate belief without "evident hypocrisy." *Id.*

The University did not require Dr. Cooper to espouse a specific belief. The Visitorship terms did not require Dr. Cooper to arrive at a particular conclusion about the Pixelian Event. It merely required the published conclusions in the Delmont Press to be limited to only his *own* scientific conclusions that were within the realm of scientific studies as defined by the academic community. Unlike *AOSI* where the funding conditions required recipients to adopt a particular belief about prostitution, the University did not require Dr. Cooper to adopt any one belief.

Instead the University defined the scope of the state funded program to include only a scientific study, not a religious study.

Furthermore, this condition was not coercive because Dr. Cooper could publish his unfunded speech independently without contradiction and "evident hypocrisy." Like *Regan* and unlike *AOSI*, Dr. Cooper could publish his findings about the Charged Universe Theory independently without contradicting his purely scientific conclusions published under the Grant. The two publications are not contradictory since the University Press publication would report the strictly empirical scientific findings of the Pixelian Event, and the independent publication would expand on those findings and draw parallels to the Meso-Pagan religion. It is common for scientists and other published academic writers to refer to their own past publications and expand on their own research. Unlike the condition in *AOSI* which would require a recipient to directly contradict their funded speech if they wished to engage in the nonfunded activity, here, Dr. Cooper could have published his Charged Univer Theory separately without any hypocrisy.

iv. Limiting a scientific study to one aligned with the scientific academy's consensus is not the suppression of dangerous ideas.

The University did not intend to suppress dangerous ideas and the Grant conditions did not have the effect of doing so. "[W]here governmental provision of subsidies is not aimed at the suppression of dangerous ideas, its power to encourage actions deemed to be in the public interest is necessarily far broader." *Regan*, 461 U.S. at 550 (internal quotations omitted). A condition is aimed at the suppression of dangerous ideas when there is evidence that the government intended to suppress dangerous ideas, or it had the effect of doing so. *Id.* at 548 (finding no suppression of dangerous ideas when there was "no indication that the statute was intended to suppress any ideas or any demonstration that it has had that effect"). Choosing to grant a government benefit for one activity while not doing so for other similar activities alone is

insufficient to show the suppression of a dangerous activity. *Leathers v. Medlock*, 499 U.S. 439, 453 (1991).

The University did not suppress dangerous ideas when it chose to fund only a scientific study that conformed to the academic community's definition of a scientific study. Like lobbying, the unfunded activity in *Regan*, the Changed Universe Theory could be considered a type of "dangerous idea" as it may challenge the status quo. However, just as the refusal to fund lobbying was not the suppression of a dangerous idea, without more, the refusal to fund the publication on the Charged Universe Theory is not suppression of dangerous ideas. The funding condition limiting a publication to a scientific study as defined by the academic community was generally applicable to all other activities outside of this category of publication. The condition did not single out obscure or dangerous theories on astrophysics, but instead limited the research to the type of publication that promoted the prestige of the Observatory and ameliorated public confusion of science and religion, an important policy objective behind the Grant.

There is no evidence that the University intended to suppress dangerous ideas nor that it had the effect of doing so. The University's actions illustrate that it was not attempting to suppress a dangerous idea because the University encouraged Dr. Cooper to publish the Charged Universe Theory under his own name. Just as the recipients in *Regan* could engage in lobbying independently from the government funding, Dr. Cooper could choose to publish his religious conclusions independently. By allowing him to publish these conclusions separately and suggesting that he do so, the University was not intending to silence his ideas.

v. Dr. Cooper could have declined the funding.

As Dr. Cooper was free to publish his religious beliefs about the Charged Universe Theory independently, had he still wished not to abide by the condition, he could have taken the appropriate recourse of declining the Grant. If a recipient continues to oppose the permissible

funding condition, the appropriate recourse is for the recipient to decline the funding. *Agency for Int'l Dev.*, 570 U.S. at 214 ("As a general matter, if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds. This remains true when the objection is that a condition may affect the recipient's exercise of its First Amendment rights.").

Dr. Cooper's First Amendment rights were not violated since the Final Report was government speech. Even if the speech was government funded private speech, the Grant conditions were constitutional as they were based on subject matter, did not restrict the recipient's speech, and merely outlined the scope of the state program. As the Grant condition was permissible, Dr. Cooper should have taken the appropriate recourse of declining the funds when he continued to disfavor the reasonable limitations of the Grant.

II. The Establishment Clause prevents the University from funding Dr. Cooper's proposed speech.

The University cannot fund Dr. Cooper's religious speculations because that would violate the Establishment Clause. A state cannot fund the establishment of a religion. *Locke v. Davey*, 540 U.S. 712, 719–20 (2004). By extension, the state can choose not to fund a clergy person's training. *Id.* Here, Dr. Cooper's suggested Final Report conclusions are inextricably intertwined with his path to becoming a Meso-Pagan sage. The University cannot allow Dr. Cooper to use the Study and Final Conclusions report to progress his clerical position.

a. Under the Establishment Clause, the state has a substantial interest against funding clerical training.

The University cannot fund an aspirational clergyperson in his theological study without violating the Establishment Clause. The Establishment Clause, made applicable to states by the Fourteenth Amendment, reads: "Congress shall make no law respecting an establishment of religion . . .". U.S. CONST. amend. I; U.S. CONST. amend. XIV; *Murdock v. Pennsylvania*, 319 U.S. 105, 108 (1943). At the Bill of Rights' adoption, the Founders "reached the conviction that

individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group." *Everson v. Bd. of Educ.*, 330 U.S. 1, 11 (1947). The Establishment Clause complements the Free Exercise Clause: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority." *Id.* at 15 (internal quotations omitted).

While governments cannot exclude a religious organization from a publicly available benefit, *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020), governments also cannot directly support a religion or prefer one religion over others. *Rosenberger*, 515 U.S. at 840. The Grant is not a publicly available benefit that discriminates based on religious status. To the contrary, the University cannot fund Dr. Cooper's proposed conclusions without impermissibly intermingling church and state to the detriment of both religious liberty and educational autonomy.

Specifically, the University cannot fund Dr. Cooper's clerical training. "[T]he Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Bremerton*, 142 S. Ct. at 2428 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). This Court recognizes a "historic and substantial state interest" in not funding the training of clergy. *Locke*, 540 U.S. at 725. "Opposition to funding to support church leaders lay at the historic core of the Religion Clauses." *Espinoza*, 140 S. Ct. at 2257–58 (internal quotations omitted). Confirming this historical context, many early state constitutions "prohibited *any* tax dollars from supporting the clergy." *Locke*, 540 U.S. at 723 (emphasis in original).

Governments cannot fund clergy. In *Locke v. Davey*, Washington established a scholarship open to students who met income, enrollment, and academic qualifications. *Id.* at 716. But the scholarship could not fund a degree in devotional theology. *Id*. Davey, an aspiring pastor, challenged this provision of his scholarship. *Id.* at 715–16. This Court held that the state had substantial Establishment Clause interests in refusing to fund aspirational clergy. *Id.* at 723–25. Here, the circumstances fall under *Locke*, allowing the University to choose not to fund Dr. Cooper's religious training.

Dr. Cooper was not denied the benefits of the Visitorship "because of who he *was*"; he was denied "because of what he proposed *to do*—use the funds to prepare for the ministry." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464 (2017) (emphasis in original). Here, like Davey, Dr. Cooper intends to use the government funds to prepare him for a clerical position. The University cannot fund this pursuit. Dr. Cooper has wanted to become a Sage for as long as he can recall. Scholarly pursuits are "prerequisites" to becoming a Sage. R. at 57. Dr. Cooper believes that this study will make him a more competitive applicant for designation as a Sage. The study and Final Report play a central role in Dr. Cooper's spiritual formation and clerical training. This constitutes a strong justification for the University to decline funding Dr. Cooper's pursuits in the interest of complying with the Establishment Clause.

b. Dr. Cooper need not choose between his religious status and the Visitorship terms.

Trinity Lutheran demonstrates why the circumstances here are factually and legally similar to *Locke*. In *Trinity Lutheran*, Missouri offered a tax reimbursement for schools replacing their playground surface with recycled tires. 582 U.S. at 454–55. The policy stated that this benefit could not go to religiously-affiliated schools. *Id*. This was not constitutional; a state could not deny a publicly available benefit to religious organizations on the basis of their religious

status. *Id*. at 460–62. Unlike *Locke*, Missouri's policy required Trinity Lutheran to choose between its religious status and receiving a public benefit. *Id*.

On the other hand, in *Locke*, Davey did not need to choose between his religious status and receiving the scholarship. "Davey could use his scholarship to pursue a secular degree at one institution while studying devotional theology at another. He could . . . use his scholarship . . . to attend a religious college and take devotional theology courses there. The only thing he could not do was use the scholarship to pursue a degree in that subject." *Id.* at 465 (citing *Locke*, 540 U.S. at 725). Trinity Lutheran was denied a generally available public benefit due to their religious status; Davey was denied a benefit based not based on his religious status, but rather based on the religious purpose for which he wanted to use the funds. *Id.*

Unlike *Trinity Lutheran*, but similar to *Locke*, Dr. Cooper need not choose between his status as a Meso-Pagan and complying with the Visitorship terms. In *Locke*, this Court emphasized that Davey retained multiple options to pursue his vocation without receiving the government benefit. Similarly, here Dr. Cooper remained free to publish whatever publish whatever he wanted on the subject, just not under the auspices of grant-funded research. Dr. Cooper did not need to choose between receiving a government benefit and his religious status.

c. To respect the Establishment Clause, public universities traditionally separate themselves from religious research.

Traditionally, public universities refrain from advancing specific religious interests. "[T]he Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Bremerton*, 142 S. Ct. at 2428 (2022) (internal quotations omitted). Although public universities did not exist when the Bill of Rights was adopted, religious liberty undergirds public education. *Mellen v. Bunting*, 327 F.3d 355, 370 (4th Cir. 2003) (finding an Establishment Clause violation where a public military college instituted supper prayers); *Sch. Dist. of Abington*

Twp. v. Schempp, 374 U.S. 203, 218, 223 (1963) ("[P]ublic schools are organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge.") (internal quotations omitted). The University can refuse to fund research with religious conclusions since public universities historically do not endorse religious activity and operate with wide discretion in allocating their resources. *Rosenberger*, 515 U.S. 819.

In conclusion, the University cannot fund Dr. Cooper's clerical training under the Establishment Clause. Even if the University were constitutionally permitted to fund Dr. Cooper's clerical training, it certainly is not required to do so given the substantial and historical concerns with state-sponsored clergy.

CONCLUSION

For the foregoing reasons, the University respectfully requests this Court affirm the decision of the Court of Appeals for the Fifteenth Circuit.

Respectfully submitted,

/s/ Team 6
Team 6

Attorneys for Respondents

APPENDIX

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.

US CONST. amend XIV.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CERTIFICATE OF COMPLIANCE

In accordance with Competition Rule (IV)(C)(3), Team 6 hereby certifies that (1) the work product contained in all copies of our brief was produced solely by the members of Team 6; (2) we complied fully with our law school's governing honor code; and (3) we complied fully with all Competition Rules.

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