No. 23-CV-1981

In the

Supreme Court of the United States

March Term 2024

COOPER NICOLAS,

Petitioner,

v.

STATE OF DELMONT and DELMONT UNIVERSITY

Respondent.

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

BRIEF FOR THE RESPONDENT

TEAM 10
Counsel for Respondent
January 31, 2024

STATEMENT OF THE ISSUES

I. Whether a state's requirement that a grant recipient conform his research and conclusions to the academy's consensus view of what is scientific imposes an unconstitutional condition on speech.

II. Whether a state-funded research study violates the Establishment Clause when its principal investigator suggests the study's scientific data supports future research into the possible electromagnetic origins of Meso-Pagan religious symbolism and that investigator has also expressed an interest in using the study to support his religious vocation.

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STATEMENT OF JURISDICTION

The United States District Court for the District of Delmont exercised original subject matter jurisdiction over this civil action arising under the Constitution and laws of the United States, pursuant to 28 U.S.C. § 1331. *See App'x. A*. Following an appeal of the District Court's entry of summary judgment, the United States Court of Appeals for the Fifteenth Circuit was vested with jurisdiction over this matter, pursuant to 28 U.S.C. § 1291. *See App'x A*. This Court granted Writ of Certiorari to review the final judgment rendered by the United States Court of Appeals for the Fifteenth Circuit, pursuant to 28 U.S.C. § 1254(1). *See App'x A*.

STATEMENT OF THE CASE

After years of local, state, and federal fundraising, the University of Delmont ("the University") opened its GeoPlanus observatory in 2020, aiming to become an internationally renowned center for celestial study. R. at 4. Subsequently, the University publicized the state-funded Astrophysics Grant, designed to capitalize on the upcoming Pixelian Comet, a rare event occurring once a century. R. at 5. Despite the state's unprecedented funding for a specific purpose, the University sought to showcase its new state-of-the-art facilities. R. at 5.

Petitioner Dr. Cooper Nicholas, a thirty-three-year-old scholar in residence at The Ptolemy Foundation, an independent scientific research institution in the Mojave Desert region of Nevada. R. at 2, 3. Delmont University awarded Petitioner the Astrophysics Grant ("the Grant") in Fall 2021, providing resources for a Principal Investigator, including salary, use of Delmont University's observatory facilities and equipment, funding for research assistants, and incidental costs related to the scientific study of the Pixelian Event. R. at 1. Delmont University's Delmont Press also covered all costs associated with publishing scientific, peer-reviewed articles, a final summative monograph, and the creation of a public dataset. R. at 1-2.

During the first nine months of his Visitorship under the Grant, Petitioner led efforts to establish parameters to study the Pixelian Event, publishing his findings in the journal *Ad Astra*. R. at 6. His research, consistent with Charged Universe Theory, generated attention and discussion in the scientific community for deviating from the prevailing consensus. R. at 7. Petitioner included a historical analysis, comparing his observations to those noted in various cultures of past centuries. R. at 6. Notably, Petitioner's research connected the Pixelean Event to the lifeforce, a central aspect of the Meso-Pagan religion. R. at 7.

Concerns were raised by Dr. Elizabeth Ashmore, *Ad Astra*'s editor, that the information from archeological and Meso-Pagan foundational texts Petitioner based his study on was "religious in nature, not empirical." R. at 8. Dr. Ashmore agreed to publish the study but included a preface disassociating the publication from Petitioner's interpretation and endorsement of Charged Universe Theory. R. at 8. The scientific community had negative responses, viewing Petitioner's suppositions as "discredited" and "medieval" in their references to a mystical connection between animate and inanimate matter. R. at 9.

Conversely, after posting his preliminary research results and theories, Petitioner received positive feedback from the Meso-Pagan community, with multiple Sages encouraging him to use his research for his application to become a Meso-Pagan Sage. R. at 57. In the Meso-Pagan tradition, Sages hold a clerical position, leading the faith and setting policy and doctrine. R. at 8. Petitioner later announced his intention to use his study under the Astrophysics Grant as the basis for his application to become a Sage. R. at 57. Although Petitioner had not yet been formally accepted to a Meso-Pagan seminary during his tenure under the Grant, he possessed his application materials and admitted his application was "pending" the results of his study. R. at 57. Petitioner also admitted he "was hopeful that [his research] would confirm his personal

beliefs and theories he was entertaining about Meso-Paganism" and that "his findings would support his application to become a Sage." R. at 8-9.

Negative responses from the academy and the press prompted concerns from University President Meriam Seawall about the impact on the Observatory's reputation. R. at 8. On January 3, 2024, President Seawall communicated to Petitioner that continued funding of the Grant and access to observatory resources were contingent on Petitioner limiting his research experiments and conclusions to align with the state's Grant language ("the Condition"). R. at 10. Petitioner rejected the limitations on his research, asserting the independence of science, and highlighting the University's non-interference with other faculty members' references to "other pagan" writings, such as those of the Greeks and Romans. R. at 10. President Seawall, in a subsequent letter dated January 12, reiterated the conditions of the Grant, emphasizing the state's subsidy for science-based conclusions and the University's inability to endorse a religious tenet. R. at 10-11.

In an email on January 16, Petitioner defended the scientific nature of his conclusions. R. at 11. In response, President Seawall set a deadline for Petitioner to agree to the limitations. R. at 11. Petitioner again insisted on the scientific nature of his study, leading to him being denied admittance to the Observatory the next day. R. at 11.

Petitioner, alleging a violation of his First Amendment rights, seeks permanent injunctive relief from the United States District Court for the State of Delmont against the State of Delmont and Delmont University. R. at 2. Petitioner requested immediate reinstatement under the Grant, including his salary, use of facilities, and payment of research assistants through March 2024. R. at 2. After both parties filed cross-motions for summary judgment, the district court granted Petitioner's motion for summary judgment on both issues. R. at 3. On appeal, the Fifteenth Circuit reversed, holding that the district court erred in finding that the Condition imposed by

Petitioner's research violated the First Amendment. R. at 34. Additionally, the Fifteenth Circuit held the University had rightfully acted within its power to maintain a wall between the church and state, supported by "long historical tradition." R. 50. Thereafter, Petitioner appealed the Fifteenth Circuit's ruling, and this Court granted certiorari.

SUMMARY OF THE ARGUMENT

First, the Respondent has a substantial, legitimate interest in preventing public confusion between science and religion. This interest is integral to the First Amendment's principle of maintaining a clear separation between church and state. The Grant adheres to this principle. The condition placed on the grant does not constitute viewpoint discrimination but ensures viewpoint neutrality in funding, consistent with the government's right to control public material without infringing on constitutional rights. The decision to withhold funding for conclusions conflicting with the scientific consensus does not suppress ideas but is a reasonable expectation for a government-funded grant.

The government, within its rights, aims to convey its ideas and policies through the state-funded Astrophysics Grant, rather than facilitating unrestricted private scientific speech. This purpose aligns with the government's agenda and is deemed constitutional. Even under strict scrutiny, the condition withstands the standard, as it is narrowly tailored to serve a compelling government interest in addressing public confusion between science and religion. Second, the Fifteenth Circuit correctly held the facts at hand implicate the Establishment Clause, and the University's continued support of Petitioner's research would amount to a violation thereof. Because the funds for Petitioner's research flow from a public school, which has a strong historical interest.

ARGUMENT

I. The Fifteenth Circuit Properly Concluded the Respondent's Requirement that the Grant Recipient Conform His Research to the Academy's Consensus View Was Not Unconstitutional.

A. The Respondent has a substantial government interest, and its actions were not intended to be a penalty to the Petitioner, but rather to prevent the public's confusion between science and religion.

1. Separation of Church and State as a Compelling Government Interest

"It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State." Elihu Root, *Addresses on Government and Citizenship*, 137, 140 (1916); *see also People of State of Ill. ex rel. McCollum v. Bd. of Ed. of Sch. Dist. No. 71, Champaign Cnty.*, Ill., 333 U.S. 203, 219, (1948). The substantial governmental interest in preventing public confusion between religion and science is integral to the First Amendment of the United States and stems from the principle of maintaining a clear separation between church and state. Thomas Jefferson, *The Writings of Thomas Jefferson*, 281 (A. Lipscomb ed., 1904).

Separation of church and state is a principle especially present and integral in spaces of education. *Zorach v. Clauson*, 343 U.S. 306, 312 (1952) (noting that in education, the separation must be complete and unequivocal, and the First Amendment studiously demands there shall be no concert, union, or dependency between church and state). Here, the Respondent's actions, taken in the context of a government-funded scientific research grant, are grounded in a substantial government interest aimed at preventing public confusion between science and religion. This interest is not only consistent with the First Amendment's principle of separation of Church and State but also crucial for maintaining the integrity of scientific discourse within educational institutions like Delmont University.

The Grant, being government-funded and intended for scientific discourse at Delmont University, heightens the government's interest. Universities like Delmont play a pivotal role as resource hubs, requiring utmost integrity and due diligence to maintain credibility and the educational mission.The Condition represents the Respondent's advocacy for concerns about the confusion of science and religion, a central theme of the First Amendment. It is not an attempt to directly control the speech of the Petitioner, as claimed by the Petitioner.

When "there [is] no attempt directly to control speech but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern," then governmental conditions are constitutional. *Speiser v. Randall* 357 U.S. 513, 518 (1958). For example, in *Speiser*, veterans challenged the constitutionality of a state law that required individuals seeking a tax exemption to sign an oath affirming that they were not members of any group advocating the overthrow of the government. *Id.* at 515. The Court held that the law was unconstitutional and found that the law violated individuals' First Amendment's protection of freedom of speech and association. *Id.* at 518.

Here, the Respondent has not shown attempts to directly control the speech of Petitioner, rather advocate for its concerns of confusing science and religion, a central theme of the First Amendment. The State is merely protecting the integrity of scientific research by vindicating the academy's consensus view of what is scientific and upholding the intentions of First Amendment's dedication to the separation of Church and State, by preventing the public's confusion between science and religion by establishing a condition on a State-funded grant all the while without penalizing the Petitioner and infringing on his constitutional rights.

2. The Condition is Not a Penalty.

The Condition does not penalize the Petitioner for his speech nor does the Respondent attempt to control his speech. Instead, it is an exercise of the Respondent's right to remove a

publicly-funded university employee in a position of heightened public visibility from advocating a view that would contradict a harm it seeks to redress, namely the public's confusion between science and religion. Respondent is merely exercising its right to prevent the public's confusion between science and religion.

Refusal to fund a protected activity, "without more, cannot be equated with the imposition of a 'penalty' on that activity." *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980). In *Harris*, this Court considered a dispute arising from a federal amendment that restricted the use of federal funds for abortions. *Id.* at 300-02. This Court reasoned that the Amendment was not a penalty, because it did not broadly disqualify women from receiving public benefits, but rather only specifically chose not to fund a protected activity, which by itself is not a penalty. *Id.* at 100.

Here, the Grant is a government-funded activity and Petitioner's decision to refuse funding for the research through the Grant is not a penalty rendered upon the Petitioner's speech. Just as this Court found in *Harris,* 448 U.S. 297, that refusing to subsidize certain protected conduct is not a penalty, here too, the University's refusal to fund a research study which was outside the bounds of academic standards is not a penalty, but simply a refusal to fund a particular activity. While the Petitioner may argue that removal from his position as visiting scholar is in effect a penalty directed at the content of his speech, the Court in *Speiser* stated that a "public employee may be deprived of his position and thereby removed from the place of special danger," referring to employees in a position to influence the community against government objectives. *Speiser*, 357 U.S. 513, 528. Here, Respondent hopes the Observatory will become one of the foremost centers for celestial study in the world, and the research forthcoming from the center has been highly publicized through the Visitorship's announcement. R. 38. The Respondent has an interest in removing Petitioner, an employee in a position of

heightened public visibility, from advocating a view that would constitute a special danger to the state by harming its objectives and confusing the public on the line between science and religious faith. The Condition is not a penalty, because it is simply a refusal to fund one activity, which the University is in its right to do, and the University has not made any attempts to control Petitioner's speech.

B. The Condition does not amount to viewpoint discrimination.

Courts have consistently found that it is unconstitutional for the government to deny a benefit based on viewpoint discrimination. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). In *Perry*, this Court deliberated on whether a university's decision not to renew a professor's contract due to his public views on education policies violated his First Amendment rights to free speech. *Id.* at 593. This Court held that the university's decision not to renew the professor's contract in response to his exercise of free speech was unconstitutional because employment was a benefit based on a constitutionally protected interest. *Perry*, 408 U.S. 593, 603. However, there is a difference between selectively funding certain programs versus unconstitutional viewpoint discrimination. *Rust v. Sullivan,* 500 U.S. 173, 193 (1991). This Court instructed in *Rust* that

> [t]he Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program…In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other.

Rust v. Sullivan, 500 U.S. 173, 193 (1991).

The Court in *Rust* further explained that finding government programs unconstitutional for advancing specific goals and discouraging alternative goals would "render numerous programs constitutionally suspect." 500 U.S. at 194. This sentiment rings true here. Advancing the specific goal of allowing the Condition through the Grant is paramount due to the significant stakes involved. The implications underscore the critical importance of prioritizing and

supporting this endeavor. The Grant was created by Delmont University in order to take advantage of the rare presence of the Pixelian Comet which appears only once every ninety-seven years. R. 5. The Grant would establish the Observatory to become one of the leaders for this kind of celestial study globally. R. 52. The Condition acts as a protective measure for the immense knowledge and discovery relying on the Grant. Just as the State had no duty to subsidize all speech activity in *Rust*, 500 U.S. at 194, here, the Respondent's refusal to fund speakers who do not conform with the academy's consensus view of what is scientific is constitutional, because the Respondent is simply choosing to selectively fund programs advancing its policies and interests. Because the Grant is a publicly-funded program and the Condition is an exercise of the State to selectively fund programs, the Petitioners are not engaging in viewpoint discrimination.

1. Government actors have a right to assert policies consistent with their own agenda.

The government has a right to assert its own ideas and messages, as well as to promote policies consistent with its own agenda, that it is not subject to First Amendment prohibitions on viewpoint discrimination. *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229, 235 (2000). In *Southworth*, the Court addressed the constitutionality of a student activity fee, used to fund student organizations at a public university where the case involved students objecting to funding certain groups with conflicting views. *Id.* at 221, 227. This Court held that the university's system of allocating student fees did not violate the First Amendment, as long as it was not discriminatory and ensured that funds were allocated without bias towards any particular ideology. *Id.* at 218. Just as the court in *Southworth* found the conduct did not violate the First Amendment because the university's program respects the principle of viewpoint neutrality, so too should the court here find that the condition did not amount to viewpoint

discrimination because the Condition did not discriminate towards any one particular ideology or viewpoint; to the contrary, the University simply has standard academic consensus regarding what is scientific and what is not. The University's consensus is neutral in that it applies without bias towards any one political party, religion, or ideology; it neutrally applies across-the-board to all.

This Court in *Nat'l Endowment for Arts v. Finley* held that the NEA's funding criteria were constitutional because standards for artistic excellence and decency were not content-based restrictions, but were reasonable considerations for the government to ensure the responsible use of public funds. *Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 586 (1998). Expanding this interpretation to scientific research, the Court reasoned that "in contrast to many other subsidies, [because] the Government does not indiscriminately 'encourage a diversity of views from private speakers.'" *Id.* at 586. Here, the Grant was awarded specifically to a singular, selected recipient based on his ability to promote the Observatory and render scientific conclusions related to the rare appearance of the Pixelian Comet. This serendipitous opportunity warrants the Respondent's exercise of its rights to assert its own ideas and policies, consistent with its own agenda supported by the scrutiny of the global science community and interest of the public whose taxes fund government-funded programs and therefore does not amount to viewpoint discrimination.

2. There was no coercion, because the Petitioner knew about the nature and condition of the Grant, and government conditions do not amount to coercion.

a) Nature and Condition of Grant

The unconstitutional conditions doctrine prevents the government from coercing people into relinquishing enumerated rights. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 595–96 (2013). A rights-pressuring offer of benefits becomes void when it "pass[es] the point at

which psychological pressure turns into compulsion." *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937)).

In *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205 (2013), this Court considered the constitutionality of a federal law requiring organizations receiving government funds for overseas anti-HIV/AIDS programs to explicitly oppose prostitution. This Court held that the government could not condition funding on the relinquishment of constitutional rights, and that the law, as written, was therefore an unconstitutional infringement of the organizations' First Amendment rights by compelling them to express a government-mandated message. *Agency for Int'l Dev.,* 570 U.S. at 221. Here, unlike in *Agency for Int'l Dev.*, this is not a situation where Petitioner would be forced to express beliefs only at the price of evident hypocrisy. *Id*. at 219. In alignment with the standard protocols of the science community, Petitioner was told that he is free to publish one theory through the Astrophysics Grant, and then later expand upon his findings, or even change his views entirely, in another publication. R. 10. Respondent therefore offered Petitioner a fair offer to both continue his research and publish his findings with the resources of the University and later revisit his findings with another publication and therefore do not amount to coercion.

The conditions and expectations of the Grant were made clear when the University first publicized the opportunity for the Grant in the Spring of 2021. R. 5. The application process for a government-funded grant from a world-renowned university requires the utmost level of due diligence and understanding of parameters of the opportunity. Respondent not only made it clear that the recipient would be provided with access to any and every resource at their disposal, but also that these resources would be used to render and publish conclusions aligned with the

scientific academy's consensus. R. 53. Petitioner applied for and accepted the Astrophysics Grant fully aware of the condition. R. 38.

Parameters within scientific publications are standard protocol within the scientific community. R. 39. Petitioner graduated summa cum laude with joint degrees in astronomy and in physics, received a doctorate in astrophysics, and had academic appointments and postdoctoral grants. R. 55. Like the Fifteenth Circuit Court of Appeals correctly noted, it is improbable that Petitioner is not aware of discoveries and research constantly being rejected, added to, or improved upon–even one's own with more than a decade's worth of experience in the science community. R. 38. Because Petitioner was given the option to continue to research at the Observatory where he could draw conclusions and publish the Charged Universe Theory through other publications, and the Petitioner knew about the nature and condition of the Grant, and government conditions do not amount to coercion.

b) Choice to Decline Grant

The appropriate recourse for a party objecting to a condition on the receipt of federal funding is to decline the funds. *Agency for Int'l Dev.*, 570 U.S. at 206. This mechanism for recourse "remains true when the objection is that a condition may affect the recipient's exercise of its First Amendment rights." *Id.* Receiving the Grant is voluntary given its nature of the recipient having to apply, be chosen, accept the Grant, and further use resources supplied by the Respondent to conduct their research. This Court in *Rumsfield v. Forum for Academic & Institutional Rights, Inc.* held that a condition is constitutional when an institution provides a "reasonable" choice in forgoing certain federal funds. 547 U.S. 47 (2006). Here, Petitioner had the choice to decline the Astrophysics Grant and could have published his conclusions elsewhere, so long as he did not use University-awarded money. The condition does not deny

Petitioner the right to receive the Astrophysics Grant to support his conclusions that conform with the academy's consensus.

Because Petitioner knew about the nature and condition of the Grant and Petitioner had reasonable, alternative options to refuse the Grant, government conditions do not amount to coercion and Respondent's requirement that the grant recipient conform his research to the academy's consensus view was not unconstitutional.

C. Allowing Petitioner to publish his findings would infringe upon Respondent's rights, forcing it to underwrite views that do not conform to its policy agenda.

1. There was no suppression of ideas.

Respondent's decision to refuse to fund, publish, or endorse conclusions which do not conform to Respondent's agenda is not a suppression of ideas. Respondent is merely exercising their right to control public material presented to their audience. In *Finley*, this Court upheld the constitutionality of a federal statute requiring the NEA, in awarding grants, to "tak[e] into consideration general standards of decency and respect for the diverse beliefs and values of the American public." *Finley*, 524 U.S. at 572-73. The Court acknowledged that, if the statute were "applied in a manner that raises concern about the suppression of disfavored viewpoints," then such application might be unconstitutional. *Id.* at 587. Here, because the Respondent awarded the Astrophysics Grant to Petitioner based on objective criteria, such as his educational and professional achievements, the Respondent did not "leverage its power to award [the] subsid[y] on the basis of subjective criteria into a penalty on disfavored viewpoints." *See id.*at 587.

Additionally, this Court held in *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 548 (1983) that Congress did not violate the First Amendment when granting tax exemptions to certain non-profit organizations that did not engage in substantial lobbying activities because the condition was not "intended to suppress any ideas," nor did it have "that

effect." Similarly, here, because the Condition requiring conclusions to conform to what is "scientific" per the academy's consensus view was not imposed for the purpose of suppressing ideas and did not have that effect, there was not a suppression of ideas.

The Condition is merely Respondent's exercise of their right to have agency over public material representing their discoveries to their chosen audience. The Court in *League of Women Voters* held that because Respondent could speak to his "chosen audience on matters of public importance," the Petitioner did not suppress his ideas by refusing to fund, publish, or endorse his non- conforming conclusions. *League of Women Voters v. FCC,* 468 U.S. 364, 365 (1984); s*ee also Rust*, 500 U.S. at 183. Similarly here, the study funded by the Grant has already garnered international attention from scientists weighing in upon it. Because the research forthcoming from the center has been highly publicized and there is an impending global audience, allowing Petitioner to publish his findings would infringe upon Respondent's rights, reputation and future, forcing it to underwrite views that do not conform to its policy agenda and in a manner inconsistent with its views.

D. The Grant was not designed to facilitate private, unfettered speech, but designed to use university funds to essentially act as the university's spokesperson.

The state-funded Astrophysics Grant awarded to Plaintiff was designed to convey a governmental message, not facilitate private unfettered scientific speech. In *Velasquez*, this Court observed whether funding restriction violates the First Amendment imposed by Congress that prohibited legal aid attorneys from challenging existing welfare laws or participating in class-action lawsuits, was constitutional. *Legal Services Corp. v. Velazquez*, 531 U.S. 533, (2001). This Court held that while Congress had the authority to place reasonable restrictions on

the use of federal funds, those restrictions could not violate the First Amendment rights of individuals. *Id.* at 1044.

Unlike in *Velasquez*, the purpose of the Grant is not to facilitate private, unfettered speech of Petitioner, but designed to use university funds to essentially act as the university's spokesperson. The Grant was specifically created to take advantage of the appearance of the Pixelian Comet and President Seawall specifically explained that the University wanted the Observatory to be a purely academic institution, and align the research with the academy's consensus view of the scientific enterprise. R. 53. Because the Grant was not designed to facilitate private, unfettered speech, but designed to use university funds to essentially act as the university's spokesperson, the Condition was not unconstitutional.

E. Even if the Respondent's conduct should be subject to strict scrutiny, it would easily withstand the standard.

Even if the Respondent's conduct amounts to viewpoint discrimination and is subjected to strict scrutiny, such scrutiny would easily be satisfied, because it is narrowly tailored to achieve a compelling government interest. When the government engages in viewpoint discrimination in the regulation of pure speech, it must meet the requirements of strict scrutiny. *Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989). The strict scrutiny standard necessitates that the restriction must be narrowly tailored and must further a substantial governmental interest. *R. A. V. v. City of St. Paul*, 505 U.S. 377, 395 (1992); *see also FCC v. League of Women Voters of Cal.*, 468 U.S. 364 (1984). Here, although there is no viewpoint discrimination by the Respondent, and therefore strict scrutiny does not apply, even if the restriction was subject to strict scrutiny, it would withstand the standard for the following reasons.

Firstly, the restriction is narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464 (2014). By focusing solely on regulating the conclusions and publications flowing from the Astrophysics

Grant, a State-funded grant, the restriction is specific and does not extend beyond what is necessary to achieve the government's objectives. Secondly, restrictions on speech can be justified if they further a substantial governmental interest. In this case, the substantial governmental interest is to address the public's confusion between science and religion. The Condition serves the legitimate purpose of preventing the dissemination of views that could be perceived as endorsing the University's position on the sensitive topic of religion and science which it specifically wanted to prevent. Therefore, even if the Respondent's conduct amounted to viewpoint discrimination and therefore should be subject to strict scrutiny, it would easily withstand the standard and the Condition is not unconstitutional.

II. The Fifteenth Circuit Correctly Held the Facts at Hand Implicate the Establishment Clause, and the Respondent's Continued Support of Petitioner Research Would Amount to A Violation of the Establishment Clause.

The Establishment Clause, the first words to amend the Constitution, informs the American people that "Congress shall make no law respecting an establishment of religion." U.S. CONST. Amend. I. While the Constitution does not provide a definition for what constitutes an "establishment," it is commonly understood this prohibition on establishment does not stop at a designation of a government-sponsored church. *McCreary v. ACLU*, 545 U.S. 844, 875-76 (2005). Even "[t]he very language of the Establishment Clause represented a significant departure from early drafts [of the Clause] that merely prohibited a single national religion," and the language instead expanded the prohibition to "state support for religion in general." *Id.* at 878 (internal quotations and citation omitted).

This "Court has repeatedly stated that Establishment Clause inquiries are fact specific and require careful consideration of the origins and practical reality of the specific practice at issue." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2444 (2022) (Sotomayor, J., dissenting). Additionally, to determine whether a case implicates the Establishment Clause, courts must look

to "historical practices and understandings." *Id.* at 2428 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). Therefore, a determination that an act runs afoul of the Establishment Clause must be consistent "with history and faithfully reflec[t] the understanding of the Founding Fathers" as to what would constitute a government establishment regarding religion. *Id.* (quoting *Town of Greece*, 572 U.S. at 576).

Significantly, this Court has recognized that "for the men who wrote the Religion Clauses . . . sponsorship, financial support, and active involvement of the sovereign in religious activity" would be considered an "establishment" in the sense of the First Amendment. *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 668 (1970). James Madison himself understood that "[r]eligion & Govt. will both exist in greater purity, the less they are mixed together." (Letter from J. Madison to E. Livingston (July 10, 1822)). Accordingly, this Court has held the government must not "aid one religion, aid all religions, or prefer one religion over another." *Everson v. Bd. of Educ. of the Twp. of Ewing*, 330 U.S. 1, 16 (1947).

Here, the Fifteenth Circuit correctly held the facts at hand implicate the Establishment Clause, and the Respondent's continued support of Petitioner's research would amount to a violation of the Establishment Clause. Indeed, the Respondent has substantial interest in ensuring it does not violate the Establishment Clause by (1) sponsoring research substantiating the core beliefs of a particular religion and (2) funding Petitioner's study, an essentially religious endeavor, which amounts to state support of clergy.

As such, the Fifteenth Circuit's decision in favor of the Respondent should be affirmed.

A. The Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by sponsoring research substantiating the core tenets of the Meso-Pagan religion.

The framers of the Constitution and the "citizens of their time intended not only to protect the integrity of the individual conscience in religious matters, but to guard against the civic divisiveness that follows when the government weighs in on one side of religious debate." *McCreary*, 545 U.S. at 876. It follows that the "prohibition on establishment covers a variety of issues from prayer in widely varying government settings, to financial aid for religious individuals and institutions, *to comment on religious questions*." *Id.* at 875 (emphasis added). Moreover, the Establishment Clause is "particularly important in the public school context given the role public schools play in our society" because "'[i]n no activity of the State is it more vital to keep out divisive forces than in its schools.'" *Kennedy*, 142 S. Ct. at 2442 (Sotomayor, J., dissenting) (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583-84 (1987)). Indeed, "[t]he modern public school derived from a philosophy of freedom reflected in the First Amendment." *McCollum*, 333 U.S. at 214.

Here, the Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by sponsoring research substantiating the core tenets of the Meso-Pagan religion. Specifically, the Respondent was correct in terminating support for Petitioner's research because (1) Petitioner's research implicates the Establishment Clause through the incorporation of his religious beliefs, and (2) the Respondent's interest in avoiding a violation of the Establishment Clause is particularly important because of its role as a public school.

Accordingly, the Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by sponsoring research substantiating the core tenets of the Meso-Pagan religion.

1. Petitioner's research implicates the Establishment Clause through the incorporation of his religious beliefs.

It is imperative that the Establishment Clause requires "the government to stay neutral on religious belief, which is reserved for the conscience of the individual." *McCreary*, 545 U.S. at 881. Moreover, "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere," *Kennedy*, 142 S. Ct. at 2444, because religious expression by the government "risks crowding out private observance and distorting the natural interplay between competing beliefs," *McCreary*, 545 U.S. at 883 (O'Connor, J., concurring).

Here, the Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by sponsoring research substantiating the core tenets of the Meso-Pagan religion. With its funding, providing of facilities, and media promotion, it is obvious the Respondent sponsored Petitioner's research in the greatest sense possible. Then, in such research, Petitioner connected the Pixelean Event to the lifeforce, a central aspect of the Meso-Pagan religion believed by the Meso-Pagans to be a force that "animates all living beings." Indeed, when Petitioner's research was published (by way of funds from the University), it was accompanied by the warning the study came "perilously close to the kind of quantum leaps and unsupported analogies of the early alchemists," and the publisher itself was concerned the study relied on information "religious in nature, not empirical."

It is clear Petitioner has taken his research beyond questions of science and, using state funds and facilities, has broken into territory that the scientific and academic communities "discredited . . . as ultimately unprovable from a scientific standpoint, and as outright 'medieval' in their references [to] . . . some kind of mystical connection between animate and even inanimate matter." Thus, in tying the lifeforce into the basis of his research, Petitioner used

state-provided funds to weigh in on his personal side of a religious debate and comment on one of the ultimate questions of religion - questions usually reserved for the private sphere and conscience of the individual. *See McCreary*, 545 U.S. at 881.

Petitioner argues that the Respondent does not "own" science, and he challenges the Respondent's "attempt to . . . become the arbiter of what is scientific and true." While there are intrinsic connections between questions of science and religion, a drastic difference exists between purely scientific studies which may implicate religious beliefs in an individual's private consciousness, and studies, such as Petitioner's here, that explicitly draw upon religious beliefs. Furthermore, those in the academic and scientific communities have expressed concern Petitioner's research has crossed the line from scientific to "religious in nature." R. at 8. Notably, Petitioner's research is so religious in nature that it led to multiple Meso-Pagan Sages encouraging Petitioner to use this research as a basis for an application to become a Sage.

The Petitioner may argue other University scientists have relied on the writings of "other pagans," such as the Greeks and Romans, in their work without issue. However, a difference exists between relying on pagan writings, versus the *religious aspects* of those writings. Other University scientists may have relied on the writings of other pagans in a way that does not implicate the Establishment Clause, such as looking to a pagan scientist's purely historical or scientific writing. The reality of this case is that University-sponsored research has now, under Petitioner's direction, taken a deeply religious turn, implicating questions of reality better left to the realm of the private sphere of religion than to the state.

Accordingly, the Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by sponsoring research substantiating the core tenets of the Meso-Pagan religion.

2. The Respondent University's interest in avoiding a violation of the Establishment Clause is particularly important because of its role as a public school.

The notion that the government should steer clear of questions of religious belief is particularly important due to the understanding that "[i]n the marketplace of ideas, the government has vast resources and special status." *McCreary*, 545 U.S. at 883 (O'Connor, J., concurring). Historically, the importance of confining matters of religion to the private sphere were what led to "the sharp confinement of the public schools to secular education []as a recognition of the need of a democratic society." *McCollum*, 333 U.S. at 216.

Decades ago, Justice Frankfurter noted, though the "development of the public school as a symbol of our secular unity was not a sudden achievement nor attained without violent conflict," the principle of "the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation" by 1875. *Id.* at 217. Indeed, Justice Frankfurter emphasized that "[z]ealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs" of this country. *Id.* at 217.

Moreover, the importance of religious neutrality in public schools is highlighted in *Edwards v. Aguillard*, where this Court held Louisiana's Creationism Act, which forbade public schools from teaching the science of evolution unless the schools also taught "creation science,[1]" violated the Establishment Clause. *See generally* 482 U.S. 578 (1987). Notably, this Court recognized that "teaching a variety of scientific theories about the origins of humankind to school children might be validly done with the secular intent of enhancing the effectiveness of science instruction." *Id.* at 594. Nonetheless, this Court ultimately held that "because the primary

[1] "Creation science" is a "religious viewpoint that a supernatural being created humankind." (Edwards).

purpose of the Creationism Act is to endorse a particular religious doctrine, the Act furthers religion in violation of the Establishment Clause." *Id.*

Here, the Respondent University's interest in avoiding a violation of the Establishment Clause is particularly important because of its role as a public school. As a public school, the University has a special status in the marketplace of ideas; in declining to support the deeply religious direction Petitioner took his research, the Respondent was ensuring the government's educational institution did not fuse secular and religious activities. Supporting, and ultimately publishing, Petitioner's research would take the University down a path reminiscent of introducing creation science into public schools.

The issue is not simply that, like many researchers do, Petitioner included a historical analysis in his research, comparing his observations to those noted in various cultures of past centuries. Had he left his analysis on a historical level simply to enhance the effectiveness of scientific analysis, the Respondent would not have taken issue with Petitioner's research. Dr. Nicholas, however, took things too far. His integration of the Meso-Pagan religious beliefs into his research amounted to an endorsement of Meso-Paganism, and the University's support thereof would be an act furthering religion in violation of the Establishment Clause.

The district court incorrectly likened the case before us to the cases of *Trinity Lutheran Church of Columbia, Inc. v. Comer,* 582 U.S. 449 (2017), *Espinoza v. Montana Department of Revenue,* 140 S. Ct. 2246 (2020), and *Carson v. Makin*, 142 U.S. 1987 (2022), but consideration of the practical reality of the facts here show the vast difference between those cases and the one before this Court today. *See* R. at 25. *Trinity Lutheran*, *Espinoza*, and *Carson* all share a factual commonality not present here; in each of those cases, the government sought to disallow the spending of publicly available funds on private religious schools. 582 U.S. 449; 140 S. Ct. 2246;

142 U.S. 1987. Unlike the benefits in those cases, which were "generally available," here, Petitioner is not merely another beneficent of a publicly available fund. *See Trinity Lutheran*, 582 U.S. at 458; *Espinoza*, 140 S. Ct. at 2262; *see Carson*, 142 S. Ct. at 1997. He was granted a position with the University that was available to a singular candidate based on their ability to aid the University in becoming world-leader for celestial study. Furthermore, funds in this case flow from a public school, which, as noted, has a strong historical interest in remaining neutral in its role as an arbiter of knowledge. A clear distinction exists between permitting individuals or entities with a religious status to access publicly available funds and requiring a public university to fund a research study endorsing specific religious perspectives.

Accordingly, the Respondent University's interest in avoiding a violation of the Establishment Clause is particularly important because of its role as a public school.

B. The Respondent has substantial interest in ensuring it does not violate the Establishment Clause by funding Petitioner's study, an essentially religious endeavor, which amounts to a state support of clergy.

This Court has stated it "can think of few areas in which a State's antiestablishment interests come more into play" than when state funds are used to fund clergy. *Locke v. Davey*, 540 U.S 712, 722 (2004). For example, in *Locke v. Davey* the state of Washington offered scholarships for students to put toward their college education, with the condition the scholarship could not be used in pursuit of a devotional degree. *See id.* at 716. There, one potential scholarship recipient planned to get a vocational degree that would train him to become a church pastor. *See id.* at 717. After learning he could not pursue his major of choice while receiving the scholarship, he sued the state of Washington. *See id.* At 718.

Upon a challenge to the constitutionality of the condition Washington placed upon receipt of the scholarship, the Court detailed the government's "historic and substantial state interest"

against funding clergy, which scholarships put towards vocational degrees would amount to. *Id.* at 725. The Locke court recognized, in refusing to fund scholarships for students pursuing devotional degrees, the state had "chosen not to fund a distinct category of instruction," because "religious instruction is of a different ilk." *Id.* at 721, 723. Notably, the Court stated the government had an interest in refusing to fund what was "an 'essentially religious endeavor . . . akin to a religious calling as well as an academic pursuit,' and opposition to such funding 'to support church leaders' lay at the historic core of the Religion Clauses" of the Constitution. *Trinity Lutheran*, 582 U.S. at 462 (citing *Locke*, 540 U.S. at 721-22).

Here, much like the State did in Locke, the Respondent has substantial interest in ensuring it does not violate the Establishment Clause by funding Petitioner's study, an essentially religious endeavor, which amounts to a state support of clergy. Petitioner's research has taken on a deeply religious character, and he has publicly announced his intention to use his study under the Grant as the basis for his application to become a Meso-Pagan Sage. Although Petitioner had not yet formally been accepted to a Meso-Pagan seminary during his tenure under the Grant, he possessed his application materials and admitted his application was "pending" the results of his study. Petitioner also admitted he "was hopeful that [his research] would confirm his personal beliefs and theories he was entertaining about Meso-Paganism" and "his findings would support his application to become a Sage."

Altogether, it is clear from the direction of Petitioner's research that his use of the Astrophysics Grant was an essentially religious endeavor, akin to a religious calling as well as an academic pursuit. Consequently, in line with its historic and substantial interest against funding an individual's pursuit of a clerical position, the Respondent chose not to fund the distinctly

religious direction Petitioner had taken his research because it was of a different ilk than the scientific research the Grant was intended to support.

Therefore, the facts here implicate the same interests and concerns asserted in Locke. Like this Court upheld Washington's decision not to fund a student's preparation for the priesthood, it should uphold the Respondent's decision not to fund the research Petitioner intends to use to become a Sage. To allow taxpayer dollars to fund research endorsing Meso-Paganism and serving as the basis for Petitioner's application to become a Sage would run afoul the historic, substantial, and constitutional government interest in avoiding a violation of the Establishment Clause.

Accordingly, the Respondent has a substantial interest in ensuring it does not violate the Establishment Clause by funding a project that is essentially a religious endeavor, amounting to state support of clergy.

CONCLUSION

For the foregoing reasons, Respondent University of Delmont respectfully requests this Court affirm the Fifteenth Circuit's grant of summary judgment and remand for entry in favor of Respondent.

CERTIFICATE OF COMPLIANCE

Pursuant to the Seigenthaler-Sutherland Rules, we, counsel for respondent, certify the following: i) the work product contained herein is the product of the team members; ii) this competition team has fully complied with its law school honor code; iii) this competition team has complied with all competition rules.

Dated: January 31, 2024

/s/ Team 10

APPENDIX A

Constitutional Provisions

U.S. Const., amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1.

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.

Statutory Provisions

28 USC § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 USC § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 USC § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods…[b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.