No. 23-CV-1981

In The

Supreme Court of the United States

March Term 2024

NICHOLAS COOPER,

Petitioner,

v.

DELMONT UNIVERSITY,

Respondent.

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

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BRIEF FOR THE PETITIONER

DATE: January 31, 2024

Team 15
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether the requirements placed upon Petitioner's receipt of the Astrophysics Grant by Respondent constituted an unconstitutional condition that violated Petitioner's First Amendment right to free speech.

II. Whether Respondents would violate the Establishment Clause by allowing Petitioner to publish conclusions suggesting his scientific data may support further research into the origins of Meso-Pagan religious symbolism, when Petitioner has indicated a possible future interest in using his conclusions to support a seminary application.

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered is final judgment on March 7, 2024. R. at 32. Petitioner then filed a writ of certiorari, which this Court granted. This Court has jurisdiction under 28 U.S.C. 1245(1).

STATEMENT OF THE CASE

Cooper Nicholas, Ph.D., ("Dr. Nicholas) is a highly regarded astrophysicist who has been widely published in the field of observational astrophysics and has enjoyed several academic appointments and post-doctoral grants both domestically and abroad. R. at 55. Beyond his scientific pursuits, Dr. Nicholas practices the Meso-Pagan religion. *Id*. While he is interested in the intersection between the two, his experiments are driven by science rather than faith. R. at

In 2021, Dr. Nicholas' reputation as a "scientific wunderkind" attracted the attention of Delmont University ("University"). R. at 53. In order to promote the University's new GeoPlanus Observatory ("Observatory"), the University planned to capitalize on the upcoming "once-in-every-ninety-seven-year appearance" of the Pixelian Comet by presenting the Astrophysics Grant ("Grant") to a visiting scholar to fund research throughout the Pixelian Event. R. at 52. In the fall of 2021, the University awarded the Grant to Dr. Nicholas. R. at 5; 53. The terms of the Grant required that "the study of the event and the derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study." R. at 5. It also stated that a summative monograph written by Dr. Nicholas and the raw data that informed his conclusions would be published by the University of Delmont Press. *Id*. The terms of the Grant did not specify any theories concerning the Pixelian Event that the University wished Dr. Nicholas to advance. *Id.*

During the first nine months at the Observatory, Dr. Nicholas "developed and conducted a variety of widely accepted parameters for measuring the celestial environment preceding the

Pixelian Event" and published his preliminary findings in peer-reviewed journal *Ad Astra*, generating much discussion among top scientists. R. at 6. Along with generating discussion among top scientists, his preliminary results and theories sparked conversation among some Meso-Pagan clergy-members, who encouraged Dr. Nicholas to consider submitting an application to a Meso-Pagan seminary. R. At 57. Though he has not taken any steps to submit such an application, Dr. Nicholas did indicate that he would consider applying to be a First Order Meso-Pagan Sage on social media, about which Respondents are aware. *Id.*

Six months after the Pixelian Event concluded, Dr. Nicholas submitted another article for publication in *Ad Astra* that included data concerning the comet's travel, the impact of the comet on meteor showers, and a historical section discussing the potential relationship between the atmospheric phenomena recorded during the Event and glyphs produced by Meso-American indigenous tribes, which, Dr. Nicholas argued, provided support for the "Charged Universe Theory." R. at 6-7.

The Charged Universe Theory proposes an alternate theory on the formation of the cosmos and, while rejected by some scientists, the Theory does have its adherents. R. at 7. Pursuant to a compromise reached between Dr. Nicholas and Dr. Ashmore, the editor of *Ad Astra*, the article was published along with an editorial note indicating that *Ad Astra* did not endorse Dr. Nicholas' conclusions concerning the Theory. R. at 7-8. After the publication of the article, the scientific academy and American press discredited the Theory as "scientifically unprovable" and called the Theory "medieval." R. at 9. However, astrophysicists from Europe, Australia, and Meso-America expressed their support for the investigation, saying that "Nicholas might well be on to something big" if allowed to continue his research. *Id.*

The University also became aware that its donors felt embarrassed by the University's apparent association with "weird science." R. at 9. However, there is no indication that any donors revoked their donations. *Id.* There was also some commentary online that the University would have difficulty attracting future fellows in light of Dr. Nicholas' publication, but there is no evidence that the University has encountered difficulties attracting visiting fellows. *Id.* Additionally, applications for post-graduate studies at the University had leveled off, but the University believed that this was due to the Pixelian Event having ended. *Id*.

In light of the mixed press and comments from donors, University President Meriam Seawall contacted Dr. Nicholas on January 3, 2024, and reminded him that "continued funding of the [G]rant... is… dependent on your agreement to... conform [your findings] to the academic community's consensus view of a scientific study." R. at 10. President Seawall indicated that she did not wish to gamble with the reputation of the Observatory or be viewed as endorsing religious work, and that the publication of "unsupported," unscientific work would violate the terms of the Grant and embarrass the University. *Id.* On January 5, Dr. Nicholas replied that he would not alter his conclusions and highlighted the fact that the University had previously allowed other University scientists to rely on pagan texts written by the Greeks, Romans, Incas, and Phoenicians. *Id*.

On January 12, President Seawall notified Dr. Nicholas that unless he agreed to amend his "unscientific" conclusions to align with what the academy considered "scientific," the University would revoke the Grant. R. at 10-11. Four days later, on January 16, Dr. Nicholas reiterated in an email that his research was not unscientific and that he would not cease his work, emphasizing that the revocation of the Grant would risk the loss of data concerning the Pixelian Event forever. R. at 11. President Seawell responded with an ultimatum ordering Dr. Nicholas to

amend his research. *Id.* Dr. Nicholas once again emphatically declined. *Id*. The next day, the University terminated Dr. Nicholas' access to the Observatory and revoked the Grant. *Id*. In a statement, the University relayed that the Grant was revoked because the university "could not countenance the confusion of science and religion." *Id*.

On February 5, 2024, Dr. Nicholas filed suit against the State of Delmont and Delmont University in the United States District Court for the State of Delmont, Mountainside Division ("District Court"). R. at 12. Dr. Nicholas challenged the University's revocation of the Grant, claiming that the University had violated his right to free speech by placing an unconstitutional condition on the Grant, and requested injunctive relief requiring his reinstatement at the Observatory. *Id*. In its answer, the University argued that the conditions placed on the Grant did not violate the First Amendment and that continuing to support Dr. Nicholas' work would violate the Establishment Clause. *Id*. Claiming that there was no dispute as to material fact, both parties filed for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. *Id*. On February 20, 2024, the District Court granted the injunction and summary judgment in favor of Dr. Nicholas. R. at 30. The University appealed, and on March 7, 2024, the United States Court of Appeals for the Fifteenth Circuit ("Fifteenth Circuit") reversed the District Court's judgment and granted summary judgment in favor of the University. R. at 51. In the wake of this decision, Dr. Nicholas appealed the decision of the Fifteenth Circuit, and this Court granted certiorari.

SUMMARY OF THE ARGUMENT

Further, continuing to fund Dr. Nicholas' research and publishing his conclusions would not violate the Establishment Clause. His private choices guided his research process and led to his conclusions, and his choice in the future to attend a seminary raises no cognizable state entanglement concern. Rather, Respondents' decision to terminate the study impinges on the Free Exercise Clause in pursuit of a more stringent separation of state than the Constitution mandates. This decision, under this Court's recent precedents, must be construed as a penalty and analyzed with the strict scrutiny required of other constitutional infringement. In the face of such scrutiny, Respondents' proffered arguments cannot qualify as compelling, especially when Respondents are bound by no constitutional provision or legislative action in their decision-making. Any other result would allow Respondents an unmitigated right to penalize state-funded researchers based on religion, an idea odious to our Constitution. In light of these arguments, this Court should reverse the Fifteenth Circuit's decision.

ARGUMENT

I. THE CONDITION REQUIRING DR. NICHOLAS' CONCLUSIONS TO ADHERE TO THE ACADEMY'S CONSENSUS AS TO WHAT IS SCIENTIFIC VIOLATED HIS FIRST AMENDMENT RIGHT TO FREE SPEECH BY PLACING AN UNCONSTITUTIONAL CONDITION ON HIS SPEECH.

By imposing restrictions on the content eligible for continued research and future publication under the Astrophysics Grant ("Grant"), Respondent violated Dr. Nicholas' First Amendment right to free speech. Therefore, this Court should reverse the Fifteenth Circuit's decision and grant Dr. Nicholas' request for summary judgment and injunctive relief.

In *West Virginia Board of Education v. Barnette*, this Court stated that "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox… or force citizens to confess by word or act their faith therein." 319 U.S. 624, 642 (1943). In light of this principle, regulations that proscribe private speech based on the content of the views expressed are presumptively invalid. *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992). Restrictions that discriminate on the basis of viewpoint or otherwise seek to direct, coerce, or proscribe protected speech are only upheld if they withstand strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 164.

When applying a condition to the recipient of government funding, the state may not deny a benefit to an individual on a basis that infringes upon that individual's right to free speech. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Nor may the state impermissibly leverage funds to command behavior it cannot otherwise require. *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214-215, (2013). Such actions abridge an individual's First Amendment rights and render the condition unconstitutional.

Here, Respondent attempted to leverage the Grant's conditional funding to curtail Petitioner's private speech concerning the Pixelian Event and the Charged Universe Theory. The condition that required Petitioner to "conform [his work] to the academic community's consensus view of a scientific study," was employed to suppress Petitioner's conclusions due to the "medieval" views they advanced, direct Petitioner's private speech, and coerce Petitioner to refrain from discussing the Charged Universe Theory. R. at. 5, 9. Applying the strict scrutiny standard to these blatant viewpoint-based restrictions, the lack of narrow tailoring and the absence of a compelling government interest prevent the condition from withstanding the rigorous standard, thus rending the condition unconstitutional. In light of this infringement on Petitioner's right to free speech, this Court should deem the condition unconstitutional and reverse the Fifteenth Circuit's erroneous grant of summary judgment.

A. Any Condition Placed On The Astrophysics Grant Must Be Viewpoint Neutral Because Dr. Nicholas' Conclusions Constitute Private Speech Rather Than Government Speech.

Respondent may not impose conditions on Petitioner's work in an attempt to preclude the publication of his findings because Petitioner's work constitutes private speech that Respondent may not regulate on the basis of viewpoint. Funding decisions made on the basis of the *content* may be upheld in instances in which the government speaks or uses funds to convey a governmental message in order to prevent the distortion of government speech. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 833 (1995). For example, in *Rust v. Sullivan*, this Court reasoned that a condition preventing recipients of government funding from engaging in abortion-related activities was necessary to prevent the distortion of the government message of preventative family planning. 500 U.S. 173, 179, 203 (1991).

However, when the government does not directly speak or subsidize the promotion of a specific message, but instead elects to fund *private speech* through the creation of subsidies, any

conditions placed on the receipt of those subsidies must be viewpoint neutral. *Rosenberger*, 515 U.S. at 834; *see also Flint v. Dennison*, 488 F. 3d 816, 833 (9th Cir. 2007) (defining viewpoint neutrality as "the requirement that [the] government not favor one speaker's message over another's regarding the same topic"). The Fifteenth Circuit argues the funding of private speech must "encourage a diversity of views." *Rosenberger*, 515 U.S. at 834. However, in *Legal Servs. Corp. v. Velasquez*, this Court recognized that even when a subsidy does not aim at "promoting a diversity of views," if the subsidy advances privates speech it can be seen as funding private speech rather than government speech. 531 U.S. 533, 542-43 (2001).

Here, Petitioner's conclusions related to the Pixelian Event constitute private speech. Unlike the government in *Rust*, Respondent never expressed a specific University-approved message that it wished for Petitioner to incorporate into his conclusions. The only requirement placed on Petitioner's work was that it adhere to general, undefined parameters of what the academy considers to be "scientific study." R. at 5. Instead, the language of the Grant seemed to allow Petitioner to draw any kind of conclusion so long as it was "scientific." R. at 5. Such latitude demonstrates that the Grant aimed to facilitate private speech concerning the Pixelian Event rather than subsidize a government message. Therefore, any condition placed on Petitioner's speech via the Astrophysics Grant must be viewpoint neutral.

B. The condition placed on the Grant was unconstitutional because Respondent attempted to leverage the condition to alter and suppress Dr. Nicholas' otherwise protected speech.

The government may not deny a benefit to an individual on a basis that infringes upon that individual's constitutionally protected right to free speech under the First Amendment, even when an individual is not entitled to that government-funded benefit. *Sindermann*, 408 U.S. at 597. A condition is unconstitutional when it goes beyond defining reasonable limits of the relevant government spending program and instead seeks to "impermissibly leverage the

distribution of funds to control speech beyond the intent of the [program] appropriating the funds." *Alliance*, 570 U.S. at 214; *see also* Heather Blakeman, *Speech-Conditioned Funding and the First Amendment: New Standard, Old Doctrine, Little Impact*, 13 NOTRE DAME L. REV. 27, 40 (2015). When determing whether a funding condition goes beyond its permissible limiting role, this Court considers whether the condition (1) discriminates based on the viewpoint expressed by the speaker, (2) attempts to coerce a speaker to refrain from speaking, (3) seeks to elicit speech that they could otherwise not command, and (4) prevents the speaker from expressing their views through alternative channels. Blakeman, *supra* at 40-41.

Under the framework provided by this Court in *Agency*, the funding condition placed on the Astrophysics Grant by Respondent violated the unconstitutional condition doctrine because it (1) discriminated on the basis of viewpoint by seeking to suppress commentary on the Charged Universe Theory and Meso-Paganism, (2) impermissibly coerced Petitioner to refrain from drawing conclusions related to the Charged Universe Theory, (3) attempted to direct Petitioner to the draw the conclusions that Respondent found most palatable, and (4) functionally eliminated any avenue for Plaintiff to continue his research on the Charged Universe Theory. Thus, this Court should find the funding condition unconstitutional.

1. Requiring Dr. Nicholas' published findings to adhere to the academy's consensus as to what is scientific impermissibly discriminates on the basis of the viewpoint and suppresses disfavored ideas.

A funding condition motivated by nothing more "than a desire [on behalf of the government] to curtail expression of a particular point of view on controversial issues of general interest is the purest example of a law . . . abridging the freedom of speech." *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 546 (19800 (Stevens, J., concurring in judgment). Therefore, the government may not impose conditions penalizing speech because the viewpoints advanced are "unpopular, annoying, or distasteful." *Murdock v. Pennsylvania*, 319

U.S. 105, 116 (1943). Such discrimination grants the favored side of a debate with "a monopoly [to] express[] its views," *Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 175-176 (1976), that undermines the "free trade in ideas" that the First Amendment protects. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

Furthermore, when the government imposes a funding condition aimed at the suppression of ideas which it classifies as dangerous, it acts unconstitutionally. *Speiser v. Randall*, 357 U.S. 513, 519 (1958). This Court has recognized that the "greatest danger to democracy lies in the suppression of public discussion [and that] ideals and doctrines thought harmful or dangerous are best fought with words" rather than the proscription of speech. *American Communications Association, C.I.O., v. Douds*, 339 U.S. 382, 395 (1950). The Court exemplified this principle in *Speiser* when it struck down a condition that required veterans to swear an oath that they would not overthrow the government, finding that the condition was "aimed at the suppression of dangerous ideas" rather than serving a legitimate government interest. *Speiser*, 357 U.S. at 519.

In the present matter, Respondent engaged in viewpoint discrimination by attempting to leverage the terms of the funding condition in order to suppress Petitioner's views concerning the Charged Universe Theory. Despite Petitioner using widely accepted methods to collecting scientific data during the Pixelian Event, Respondent sought to curtail Petitioner's speech when they received blowback from scientists and donors who called Petitioner's work "medieval" and "weird science." R. at 6, 9. As emphasized in *Murdock*, Respondent's attempt to proscribe Petitioner's speech by leveraging Grant funding because it found Petitioner's conclusions to be unpopular was unconstitutional. Ultimately, Respondent's attempt to proscribe Petitioner's speech amounted to nothing more than the same impermissible effort to suppress speech on the

basis of "dangerous ideas" this Court struck down in *Speiser*. Therefore, this Court should find that the condition placed on the Grant by Respondent unconstitutionally discriminates on the basis of viewpoint.

2. Respondent attempted to leverage the condition placed on the Grant to direct Dr. Nicholas to adopt favorable conclusions it otherwise could not command.

A government entity may not impose a condition on speech that seeks to produce a result that it could not directly command without running afoul of the First Amendment. *Speiser*, 357 U.S. at 526. When an individual is forced to adopt a specific viewpoint on an issue of debate as a condition of the benefit they received, the condition is unconstitutional. *See Alliance*, 570 U.S. at 212. In *Speiser*, the Court found that because the state could not pass legislation requiring veterans to take an oath promising not to overthrow the government, the state could not circumvent constitutional restrictions by commanding recipients to take the oath at risk of penalty. *Speiser,* 357 U.S. at 526. Moreover, when upholding a funding condition requiring law schools to allow military recruiters to speak to their students in *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, the Court made clear that their decision turned on the fact that the condition did not regulate "what they may or may not say." 547 U.S. 47, 60 (2006).

Here, Respondent imposed the funding condition to limit Petitioner's speech and force him to adopt palatable scientific findings. While the law schools in *Rumsfeld* were free to speak unfavorably about military recruiters, the condition imposed here *prevented* Petitioner from publishing conclusions about the Charged Universe Theory. R. at 10-11. Moreover, similar to the compelled oath in *Speiser*, the condition required Petitioner to adopt and publish whatever theory the academy considered dominant. R. at 5. In both situations, Respondent utilized the condition to require results that it could not otherwise command. In light of this infringement upon Petitioner's First Amendment rights, this Court should find the condition unconstitutional.

3. Respondent used the funding condition to coerce Dr. Nicholas into refraining from sharing his conclusions by penalizing his speech.

When the government imposes a condition that seeks to coerce the recipient by leaving them with "no practical choice but to accept the funds" at the expense of their constitutional right, the condition is unconstitutional. While it is true that "[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty,'" *Harris v.McRae*, 448 U.S. 297, 317 n.19 (1980), when a condition is meant to dissuade speakers from engaging in protected speech, the condition's deterrent effect is the same as if the stated fined them for such speech. *Speiser*, 357 U.S. at 518. In *Speiser*, this Court ruled that requiring veterans to take an oath promising not to overthrow the government in order to receive a tax exemption amounted to a coercive penalty meant to make veterans refrain from engaging in protected speech. *Id.* at 526.

Here, Respondent leveraged the funding provided by the Grant in an attempt to coerce Petitioner to refrain from speaking about or researching the Charged Universe Theory. Similar to the condition imposed on the veterans in Speiser, Respondent conditioned Petitioner's continued receipt of the Grant on his willingness to alter the content of his conclusions in an effort to dissuade Petitioner from promoting the Charged Universe Theory. R. at 10-11. Respondent's attempt to control Petitioner's speech is just as grave of a First Amendment violation as the government fining individuals for speech they find distasteful or unpopular. Given the coercive nature of the funding condition, this Court should deem the condition unconstitutional.

4. The condition placed upon the Grant prevents Dr. Nicholas from expressing his conclusions through alternative channels.

When a funding condition prevents an individual from engaging in protected speech both in the context and outside the boundaries of the government-funded program, the condition is unconstitutional. *Alliance*, 570 U.S. at 218-19; *see also FCC v. League of Women Voters*, 468 U.S. 364, 400 (1984) (holding that funding condition prohibiting editorialization on radio was

unconstitutional due to lack of alternative channels for editorializing). In *Alliance*, this Court struck down a funding condition that required recipients to adopt a policy opposing prostitution, finding that the condition sought to regulate speech *beyond* the parameters of the program and effectively eliminated the recipients' ability to express their own views "on [their] own time and dime." *Alliance,* 570 U.S. at 218-19. Forcing an individual to contort their speech to receive a government benefit places the individual in a position in which they either lose their ability to express their view or where they can only do so "at the price of evident hypocrisy." *Id.* at 219.

Here, the funding condition imposed by Respondent, coupled with the consequences associated with the revocation of the Grant, placed Petitioner in a position in which he is unable to share his conclusions concerning the Charged Universe Theory. Similar to the lack of alternative channels in *Alliance*, Petitioner has no outlet for his conclusions. If Petitioner declines the Grant, he loses access to the facilities that enable his studies and risks losing all of the data he collected during the once-in-a-lifetime Pixelian Event. R. at 1, 11. However, if Petitioner alters his conclusions in order to retain funding, he can only publish his views independently "at the price of evident hypocrisy." To publish two papers that draw diametrically opposed conclusions on the same topic greatly reduces Petitioner's credibility. R. at 2, 19. As a result, Petitioner has no access to alternative channels of expression, thus demonstrating the condition's impermissible, restrictive effect on speech beyond the boundaries of the Grant.

C. The condition placed on the Grant cannot withstand strict scrutiny.

Both Petitioner and Respondent agree that when the government seeks to impose a content-based restriction on protected speech, the restriction must pass strict scrutiny. *See R.A.V.*, 505 U.S. at 381. In order to withstand strict scrutiny, the government must demonstrate that the restriction is (1) narrowly tailored and (2) furthers a substantial government interest. *Id.* Here, the condition placed upon the Grant by Respondent cannot withstand strict scrutiny because the

condition is both overinclusive and underinclusive and fails to advance Respondent's stated interest in preventing the confusion of science and religion.

1. The funding condition placed on the Grant by Respondent is not narrowly tailored.

Narrow tailoring requires the state to utilize the least restrictive means available to accomplish their stated goal to ensure that the burden on the First Amendment is not too great. *See United States v. Playboy Entertainment Group*, 529 U.S. 803, 814 (2000) (holding where less restrictive method is available, more restrictive condition should be struck down). Restrictions on speech must also refrain from being overbroad and underinclusive. A restriction is deemed overbroad when it reaches beyond what the proffered government interest justifies regulating and restricts protected speech. *R.A.V.*, 505 U.S. at 381. A restriction is considered underinclusive when it "regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest in a comparable way." *Williams-Yulee v. Florida Bar,* 575 U.S. 433, 449 (2015). In *Smith v. Daily Mail Publishing Company*, the Court found that a restriction that prohibited newspapers, but not other forms of electronic media, from publishing the names of juvenile defendants was fatally underinclusive because it failed to advance the stated purpose of protecting the identities of juveniles defendants. 443 U.S. 97, 104-105 (1979).

Here, the funding condition imposed by Respondent does not utilize the least restrictive means available to advance its goal because a less restrictive method is available. Rather than prohibiting Petitioner from continuing his research and publishing his summative monograph through Respondent's publishing company, Respondent could have taken similar steps to *Ad Astra* journal and published Petitioner's work with an editorial note that makes clear what

portions of the study are scientific and what portions delve into the intersection of science and religion. R. at 8.

Furthermore, the funding condition imposed by Respondent is not narrowly tailored, as it is simultaneously overbroad and underinclusive. Respondent's exclusion of *all* conclusions that do not comport with the academy's "consensus" is fatally overbroad, as it overreaches and proscribes speech that poses no risk of confusing science and religion solely because it is an emerging belief not yet recognized by the scientific community. The condition imposed by Respondent is also underinclusive. Similar to the restriction placed on one form of news medium in *Smith*, Respondent's funding condition only prohibits the use of Meso-Pagan texts when the evidence demonstrates that the University has previously condoned scientists' use of other pagan texts. If Respondent actually wanted to prevent confusion of religion and science, it would follow that the use of any pagan text would be prohibited. This discrepancy demonstrates that Respondent's condition is fatally underinclusive and fails to advance Respondent's stated goal. The overbreadth and underinclusivity of the condition demonstrates that it is not narrowly tailored and therefore cannot withstand strict scrutiny. As a result, the condition is rendered unconstitutional on the basis of viewpoint discrimination.

2. The funding condition placed on the Grant does not further Respondent's stated interest in preventing the confusion of science and religion.

When the government seeks to restrict speech that is otherwise protected on the basis of its content, the government must demonstrate that the proscription of speech advances a compelling state interest that works to solve an "actual problem." *Playboy Entertainment Group*, 529 U.S. at 822. Showing that an actual problem exists requires "more than anecdote and supposition." *Id.* In *Brown v. Entertainment Merchants Association*, this Court struck down a state statute restricting the sale of violent video games to minors because the state could not

demonstrate a causal link between video games and violence in minors. 564 U.S. 786, 799 (2011). Even where an actual problem exists, if the state is unable to demonstrate that the proscription furthers the compelling interest identified by state, it cannot survive strict scrutiny. *Smith*, 443 U.S. at 104-05. In *Smith*, this Court determined that even though the interest of protecting the identities of juvenile defendants was compelling, the state's failure to regulate all mediums of communication used to disseminate such information prevented the state from achieving its goal. *Id.*

In the present matter, the condition placed on the Grant does not address an actual problem or advance Respondent's stated goal of preventing the confusion of science and religion. Like in *Brown*, Respondent failed to provide any evidence beyond mere supposition that demonstrated that the confusion of religion and science resulting from Dr. Nicholas' article was an "actual problem" in need of solving. Instead, the healthy debate between members of the scientific community demonstrates that Petitioner's work contributes to scientific discourse rather than confusing religion and science. R. at 9. Moreover, similar to *Smith*, by allowing the use of other Pagan texts in scientific research, Respondent allows the infusion of religion into science that it seeks to prevent, thus demonstrating that the condition does not accomplish its stated purpose. R. at 10. Therefore, the condition cannot withstand strict scrutiny and is thus unconstitutional on the basis of viewpoint discrimination.

D. Dr. Nicholas' ability to relinquish the Grant does not provide adequate recourse to remedy the violation of his First Amendment rights.

Petitioner's ability to forgo the Grant funding does not provide Petitioner with an adequate remedy in light of Respondent's violation of his First Amendment right to free speech. While the typical route of recourse for recipients of government benefits is to forgo the benefit, when a condition places an unconstitutional burden upon the recipient's rights, offering the

recipient the option to decline the funds does not provide an appropriate avenue of recourse in light of the constitutional violation. *Alliance*, 570 U.S. at 214; *but see Grove City College v. Bell*, 465 U.S. 555, 575 (1984) (holding denial of funding was appropriate recourse where funding condition was constitutional). In *Legal Services Corp.*, this Court held that a condition that prohibited federally funded lawyers from advancing certain arguments violated the First Amendment and was therefore unconstitutional. 531 U.S. at 537. There, this Court noted that it "misses the point" that attorneys can withdraw if they do not agree with the speech restrictions because withdrawing does nothing to address the statute's unconstitutional attempt to "exclude… arguments and theories Congress finds unacceptable." *Id.* at 546.

Here, the condition places an unconstitutional burden on Petitioner, and it would therefore "miss the point" to say that Petitioner has the option to relinquish the Grant. If Petitioner relinquishes the Grant to avoid Respondent's unconstitutional attempts at proscribing his speech, he will be unable to complete his research and risks losing the data he collected during the once-in-a-lifetime Pixelian event forever. R. at 11. Expecting Petitioner to choose between the violation of his First Amendment rights and giving up his scientific work to avoid such a violation does nothing to remedy Respondent's infringement of his constitutional rights. Therefore, this Court should deem the condition unconstitutional and reverse the Fifteenth Circuit's erroneous grant of summary judgment.

II. THE ESTABLISHMENT CLAUSE DOES NOT PERMIT RESPONDENTS TO STRIP AN ELIGIBLE GRANT RECIPIENT OF HIS BENEFIT BASED ON HIS PRIVATE RELIGIOUS EXERCISE OR ON HIS FUTURE RELIGIOUS DESIRES.

The Fifteenth Circuit erred in holding that the State's interest separating church and state supports the University of Delmont's decision to terminate Dr. Nicholas' research study. This Court has rejected similar religious exclusions time and time again, and this case – where

Respondents discriminated against Dr. Nicholas based on his "religious" research conclusions – is cut from the same unconstitutional cloth.

First, Respondents would not violate the Establishment Clause of the Constitution by funding Dr. Nicholas' research study, and the private choices he makes in the future are disconnected from any state entanglement concern. Repeatedly, this Court distinguished between government programs that directly support religious training, which the Establishment Clause does not permit, and government programs that only support religious training through the private choices of individuals, which the Establishment Clause does permit. This is a case of the latter, not the former; any support of Meso-Paganism gained through Dr. Nicholas' research is based on his private choices alone. Because of his private choices, Respondents' decision to terminate Dr. Nicholas loses its footing in the Establishment Clause.

Second, the Fifteenth Circuit did not review Respondents' decision to terminate the grant with any level of constitutional scrutiny. But where states seek to limit the private choices of religious individuals receiving government benefits, either by coercing them to abdicate their religious motivations or by excluding from the programs altogether, this Court has repeatedly demanded that action withstand scrutiny. This is the case here; where a state excludes a religious person from a benefit to which he is entitled out of fear of his future religious exercise, the state exacts a penalty warranting strict scrutiny. Respondents assert no state interests "of the highest order" which justify their decision.

A. Respondents' action was not compelled by the Establishment Clause because the only connections between the neutral grant and the Meso-Pagan religion are the result of Dr. Nicholas' private choices.

Respondents would not violate the Establishment Clause of the Federal Constitution by continuing to fund Dr. Nicholas' research grant, even if he used the fruits of his research to

eventually apply to a Meso-Pagan seminary. This Court's precedents make clear that the link between government funds and sectarian organizations is broken by the private choices of benefit recipients. *See, e.g*., *Carson v. Makin*, 596 U.S. 767, 781 (2022); *Locke v. Davey*, 540 U.S. 712, 719 (2004); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (where government funds reach religious organizations "wholly as a result of…genuine and independent private choice, [those] program[s are] not readily subject to challenge under the Establishment Clause."). Dr. Nicholas' two years of arduous research, independent conclusions based on this research, and future life path based on these conclusions, are each private choices.

For support, Respondents turn to *Locke v. Davey*, a case in which the State of Washington created a scholarship program to aid students in funding college educations but excluded from participation students pursuing degrees in devotional theology. *See Locke*, 540 U.S. at 715-16. But Respondents' reliance on *Locke* is misplaced. Most significantly, Washington's exclusion was required by its state constitutional provision which had been "authoritatively interpreted as prohibiting even indirectly funding for religious instruction that will prepare students for the ministry." *Id*. at 719. The Court took note of this and explained that there was "no doubt" Washington could have permitted its scholarship recipients to pursue degrees in devotional theology permissibly under the Federal Constitution, as the "link between government funds and religious training is broken by the independent and private choices of recipients." *Id*. (citing *Zelman*, 536 U.S. at 652). Thus, the Court's decision recognized that Washington's Constitution drew a "more stringent line than that drawn by the United States Constitution." *Id*. at 722.

More recently, this Court considered a Montana scholarship program administered in accordance with the "'no-aid' provision" of Montana's Constitution, a clause barring

government aid to religious schools. *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2252 (2020). This Court noted that the scholarship program, even without the "no-aid" provision, "[wa]s permissible under the Establishment Clause." *Id*. at 2254. Relying on *Locke*, the Court explained that the Establishment Clause is "not offended when religious observers…benefit from neutral government programs." *Id*. (citing *Locke*, 540 U.S. at 719). Further, it explained that "Establishment Clause objection[s]…[are] particularly unavailing" where government support reaches religious organizations "only as a result of [citizens] independently choosing" to support them. *Id*. (citing *Locke*, 540 U.S. at 719; *Zelman*, 536 U.S. at 650-53); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017) (where a Missouri Constitution "no-aid" policy excluded religious organizations from a government program, the State "agree[d] that the Establishment Clause…[did] not prevent [it] from including" those organizations.).

Here, Respondents are on different footing with respect to their exclusion than Washington was in *Locke*, as their decision to terminate Dr. Nicholas was not rooted in a state constitutional provision – they must rely only on the Federal Establishment Clause to support. And where, as here, the State creates a neutral government program to study a scientific event, it is constitutionally permissible for a religious individual to enjoy the benefits of that program. Equally permissible under the Exercise Clause are that individual's research conclusions, because they are arrived upon through a series of independent choices. Thus, the Establishment Clause does not prevent Respondents from supporting the grant.

B. Respondents' interest in achieving greater separation of church and state than required under the Establishment Clause is insufficient to support its penalty on Dr. Nicholas' free exercise of religion.

While Respondents may retain a strong interest in separating church and state "more fiercely" than the Federal Constitution requires, this interest does not allow them to ignore Dr. Nicholas' constitutional freedoms. Respondents' decision to terminate Dr. Nicholas' research

"penalize[d]" his ability to freely exercise Meso-Paganism and should accordingly be reviewed with constitutional scrutiny. *Espinoza*, 140 S. Ct. at 2255 (quoting *Trinity Lutheran*, 582 U.S. at 462). In cases where otherwise eligible recipients of state benefits have been denied equal treatment based on religious status or religious exercise, this Court has recognized those denials as penalties on free exercise and employed "the strictest scrutiny" in reviewing them. *Id*. Under this analysis, a State must act in pursuit of an "interest of the highest order," and its action must be narrowly tailored to advance that interest. *Id*.

Respondents' decision to terminate the grant must fail on this level of scrutiny. This Court has made clear that Respondents' desire to "separate church and state 'more fiercely' than the Federal Constitution cannot qualify as compelling in the face of the infringement of free exercise." *Carson*, 596 U.S. at 781 (emphasis in original); *see also Widmar v. Vincent*, 454 U.S. 263, 276 (1981) ("The state interest…in achieving greater separation of church and State than is already ensured under the Establishment Clause…is limited by the Free Exercise Clause."). Further, recent precedent affirms that the exclusion of religious recipients from benefits to which they are otherwise entitled, whether based on religious status or intended religious use, is constitutionally impermissible. *Carson*, 596 U.S. at 779 (quoting *Trinity Lutheran*, 582 U.S. at 462). Such penalties are "odious" to the Free Exercise Clause and, therefore, are constitutionally impermissible. *Id*.

1. Respondents' decision to terminate the grant amounts to a penalty based Dr. Nicholas' religious exercise, and, as such, must be subject to strict scrutiny.

This Court has "repeatedly" affirmed that a state program violates the constitution when it "excludes religious observers from otherwise available benefits." *Carson*, 596 U.S. at 778. In this case, Dr. Nicholas undertook his astrophysics research with the expectation that Respondents would publish his conclusions regarding the Pixelian Event, something expressly contemplated

in the grant agreement. R. 9-10. But because Dr. Nicholas has indicated publicly that he has considered applying to a Meso-Pagan seminary at some point in the future, and because his research study could be used in that application, Respondents refused to comply with the terms of their own agreement, and instead terminated Dr. Nicholas' grant. R. 44. Plainly, the object of Respondents' decision to terminate Dr. Nicholas' study was to "restrict" his ability to act according to his "religious motivation," when enjoying an otherwise available benefit of his position. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993); *see also Carson*, 596 U.S. at 778.

Such a restriction on an otherwise available benefit based on one's religious motivation is, by this Court's terms, a "penalty on the free exercise of religion that triggers the most exacting scrutiny." *Espinoza*, 140 S. Ct. at 2255; *see also Trinity Lutheran*, 582 U.S. at 449. This Court's precedent confirms that such exclusions, whether based on religious status or a religious use of the benefit, warrant heightened review. First, in *Trinity Lutheran*, this Court held that a state policy denying grants to applicants "owned or controlled by a church, sect, or other religious entity" violated the Free Exercise Clause because it "expressly discriminated" based on religious status. *Trinity Lutheran*, 582 U.S. at 462 ("If [our] cases…make one thing clear, it is that such a policy imposes a penalty on the free exercise of religion."). Second, in *Espinoza*, this Court held that the Free Exercise Clause "forbade" a State from excluding religious schools from a government program designed to defray the cost of private school tuition, and that the application of a similar, status-based "no-aid provision" required "strict scrutiny." *Espinoza*, 140 S. Ct. at 2255; *see also Carson*, 596 U.S. at 779.

Third and most recently, in *Carson*, this Court held that the suspect nature of religiously oriented exclusions from public benefit programs was not limited only to status-based

exclusions, but also included exclusions based on religious uses of public benefits. *Carson*, 596 U.S. at 788. There, the State of Maine argued that its program, though substantially similar, was more limited than the program at issue in *Espinoza,* because its basis for distinguishing its "nonsectarian" requirement was that Maine did not exclude private schools simply because of affiliations with religious organizations. *Id.*, at 787. Rather, it only excluded schools "promot[ing] a particular faith and present[ing] academic material through the lens of that faith." *Id*. Rejecting the State's argument, this Court explained that although *Trinity Lutheran* and *Espinoza* both concerned status-based discrimination, "those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause." *Id.*

Just as a state may not exclude a religious organization from a public benefit based on that institution's status or that institution's intended use of funding, a state may not provide a general grant for the research and study of a rare astrophysical event and subsequently deny that grant based on a potentially religious conclusion. Doing so penalizes the free exercise of religion in the same way foreclosed by *Trinity Lutheran*, *Espinoza*, and *Carson*. To allow Respondents' course of action in this case to escape constitutional scrutiny would be an abdication of this Court's important role and would fail to heed the lessons of this Court's significant precedent.

2. Respondents advance no interest compelling enough to withstand strict scrutiny, and this Court should accordingly determine that the University acted in an unconstitutional way.

Respondents' decisions to terminate Dr. Nicholas' grant and prevent his religious conclusions from publication are unsupported by a sufficient interest to justify the penalty they impose. To withstand strict scrutiny, this Court must be satisfied that Respondents' action "advance[s] 'interests of the highest order' and [is] narrowly tailored in pursuit of those interests." *Carson*, 596 U.S. at 780 (quoting *Lukumi*, 508 U.S. at 546). But under such scrutiny, Respondents' action cannot stand.

Most primarily, Respondents' understanding of the Establishment Clause is more stringent than the Constitution requires. As it would have been consistent with the Federal Constitution for Washington, in *Locke,* to sponsor with state funding degrees in devotional theology, it would not offend the Establishment Clause if Dr. Nicholas used his research to aid in applying to a seminary. *See Locke*, 540 U.S. at 718. Further, Respondents lack the constitutional or legislative enactments that substantially supported the exclusionary state activity in *Locke* and *Espinoza*. *See Id*.; *Espinoza*, 140 S. Ct. at 2254 Rather, their strict antiestablishment is bound by nothing other than their own determinations, and simply "cannot qualify as compelling" to justify Dr. Nicholas' termination. *Carson*, 596 U.S. at 781; *Espinoza*, 140 S. Ct. at 2260.. Respondents would have published and supported any scholar's study, presumably, so long as that scholar did not arrive at religious conclusions or contemplate pursuing a life in the clergy. That, like supporting all private schools except those that teach religion or considering all applicants other than those affiliated with religious sects, is discrimination based on religion where it is not mandated by the Establishment Clause.

Nor does the University retain unmitigated deference in hiring and terminating state-funded grant recipients as advanced by the Fifteenth Circuit. R. 49-50. Although universities frequently make complex judgments based on a variety of factors, and this Court is wise to allow universities insulation in some cases, it is precisely the "judicial role" to ensure that Respondents' decision-making does not violate the Constitution. R. 49 ("To question [universities'] judgment…would be to severely overstep our judicial role and would reflect a severe lack of judicial restraint."). State legislatures, like state universities, frequently make complicated decisions based on a variety of factors, yet this Court has not given those legislatures unmitigated deference in enacting discriminatory legislation. Granting universities

special solicitude based on their unique interests in furthering their academic goals and permitting conduct like Respondents' in this case invites "no logical limit" and could "justify the singling out of religion for exclusion from public programs in virtually any [educational] context." *Locke*, 540 U.S. 730 (Scalia, J., dissenting).

Because Respondents action was not required by the Establishment Clause, it must be rooted in interests sufficiently compelling to justify its infringement on religious freedom. Here, the state advances no argument sufficient to penalize Dr. Nicholas in such a severe way for considering a life in the clergy, and it is owed no special institutional deference when it makes decisions in such a plainly discriminatory way. Without sufficiently compelling interests, this course of conduct cannot withstand constitutional scrutiny, and the State's argument must fail.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the United States Court of Appeals for the Fifteenth Circuit's and grant Dr. Nicholas' request for summary judgment and injunctive relief so that Dr. Nicholas can complete his research without infringement on his First Amendment rights.

Respectfully Submitted,

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APPENDIX A

Constitutional Provisions

U.S. Const. amend. I

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

Statutory Provisions

28 U.S.C. § 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...

CERTIFICATE OF COMPLIANCE

In accordance with Rule IV(C)(3) of the Seigenthaler-Sutherland Competition rules, Team 15 hereby submits this certificate of compliance to testify that:

1. The work product contained in all copies of Team 15's brief is in fact the work product of the team members, and only the team members;
2. Team 15 has complied fully with their law school's governing honor code; and
3. Team 15 has complied with all Competition Rules.

Respectfully submitted,

/s/ Team 15
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January 31, 2024