No. 23-CV-1981

IN THE

Supreme Court of the United States

OCTOBER TERM 2023

Cooper Nicholas
Petitioner,

v.

State of Delmont and
Delmont University,
Respondent.

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

BRIEF FOR THE RESPONDENT

TEAM 16
COUNSEL FOR RESPONDENT

January 31, 2024

QUESTIONS PRESENTED

1. May a state university require that an individual grant recipient conform his use of grant funds to particular subject matter, specifically, scientific research, without violating the First Amendment?

2. May a public research university terminate a grant recipient's study when the grant recipient expresses an interest in using his grant-funded research to become a religious cleric?

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Petitioner Cooper Nicholas is an individual and former Principal Investigator for the Delmont University Visitorship in Astrophysics and a citizen of Delmont.

Respondent State of Delmont is a state within the United States of America. Respondent Delmont University is a public university located in the State of Delmont.

DECISIONS BELOW

The Fifteenth Circuit Court of Appeals' decision reversing the district court's holding is reported at *Delmont v. Nicholas*, 23-CV-1981 (15th Cir. 2024) and reprinted on pages 32-51 of the record. The district court's opinion is available at *Nicholas v. Delmont*, 23-CV-1981 (D. Delmont 2024) and reprinted on pages 1-31 of the record.

STATEMENT OF JURISDICTION

The judgment of the Fifteenth Circuit Court of Appeals was entered on March 7, 2024. The petitioner timely filed a writ of certiorari, which this court granted. R. at 60. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

RELEVANT CONSTITUTIONAL PROVISIONS

The First Amendment of the United States Constitution provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. Const. amend. I.

STATEMENT OF THE CASE

A. Statement of Facts

Delmont University is home to the GeoPlanus Observatory. R. at 1. To assist in the scientific study of the once-in-a-lifetime phenomenon known as the Pixelian Event, during which the Pixelian Comet is visible from Earth, Delmont University, a public institution, created a

Visitorship in Astrophysics. R. at 1. The University funded its Visitorship through the Astrophysics Grant, which provided a salary for a Principal Investigator and covered research costs incurred during the study of the comet. R. at 1. The Grant required that the Principal Investigator's published conclusions, derived from the study of the Pixelian Event, adhere to the "academic community's consensus view of a scientific study." R. at 5.

Delmont University created the Grant to promote its new observatory and "ensure that the Pixelian Event was accurately researched." R. at 53. The University wanted the Observatory to be a "purely academic institution," and therefore required that Grant funds would only be used to publish conclusions consistent with the scientific academy's consensus. R. at 53. The University placed this condition on the Grant because the recipient of a previous grant "overtly championed dubious religious positions" in their research, causing the "academic community and donors [to] question[] the quality and reputation of the entire department for allowing such conclusions to be published under the auspices of the University." R. at 53. This incident remains a reputational problem for the University. R. at 53.

The University awarded the highly sought-after Astrophysics Grant to Dr. Cooper Nicholas, and he became the Principal Investigator at the Observatory. R. at 5. In addition to being a renowned astrophysicist, Nicholas is an adherent to the Meso-Pagan religion. R. at 4. Nicholas led the Observatory's effort to study the Pixelian Event, collecting and publishing data on the celestial effects of the comet's appearance. R. at 6. Nicholas published an article detailing his conclusions surrounding the comet in the journal *Ad Astra*. R. at 6. In the article, Nicholas related his observations of the Pixelian Event to the history and culture of Meso-American indigenous tribes. R. at 7. Nicholas's article suggested that his observations of the Pixelian Event

supported the Charged Universe Theory, an idea derived from Meso-Pagan religion that has long been considered a fringe concept with little scientific support. R. at 7, 8.

In relating the comet to this theory, Nicholas sought to advance his own Meso-Pagan religious interests and beliefs. R. at 6-8. Nicholas had long harbored a desire to become a First Order Sage, a leader who sets policy and doctrine about Meso-Pagan religion. R. at 57. Nicholas testified that he is "strongly considering applying" to Meso-Pagan seminary and hoped that his study of the Pixelian Event would confirm his religious beliefs and bolster his seminary application. R. at 8-9.

Ad Astra published Nicholas's article, but only after adding a disclaimer that noted the lack of empirical evidence supporting Nicholas's Charged Universe Theory position. R. at 8. The disclaimer stated that the article recalled "the kind of quantum leaps and unsupported analogies of the early alchemists" and expressed concern about Nicholas's reliance on ancient Meso-Pagan sources based on religious beliefs instead of empirical conclusions. R. at 8. The scientific community decidedly rejected Nicholas's purported findings, except for a few individuals who said that his research could possibly be validated "only in the long view." R. at 9. Scholars agreed that Nicholas's theory was ultimately unprovable. R. at 9. The University feared for the economic viability of the Observatory as it faced criticism from donors and legislators, and applications to the Observatory's graduate degree programs slowed. R. at 9.

The University wrote a letter to Nicholas in which it advised him that his continued study of the Pixelian Event, using the University's equipment, facilities, and Astrophysics Grant funding, must conform to the academic community's consensus view on what constituted scientific study. R. at 10. In a back-and-forth correspondence between Nicholas and University officials, Nicholas argued that his research was scientific and that he should be allowed to

publish without interference. R. at 9. The University told Nicholas that he was welcome to publish his religious theories elsewhere, but if he intended to continue using the Observatory facilities and financial support, his conclusions must adhere to the Grant's well-defined parameters. R. at 10-11. Nicholas refused to adhere to these guidelines, and the University terminated his research as Principal Investigator. R. at 11.

B. Procedural History

Nicholas filed suit against the State of Delmont and Delmont University, requesting injunctive relief in the form of his reinstatement. R. at 12. He argued that the Grant placed an unconstitutional condition on his speech in violation of the First Amendment. R. at 12. The University claimed that the Grant did not violate Nicholas's First Amendment rights, and that continuing to support his research would violate the First Amendment's Establishment Clause. R. at 12. The parties filed cross-motions for summary judgment. R. at 12.

The district court granted Nicholas's motion for summary judgment and his requested injunction. R. at 30. The Fifteenth Circuit reversed the district court's holding and granted summary judgment in favor of the University. R. at 51.

SUMMARY OF THE ARGUMENT

The condition placed on the Astrophysics Grant did not violate the First Amendment because the government may selectively fund expressive conduct and restrict the use of funds to activities within the scope of its program without violating the Constitution. Hence, Delmont University may define the limits of its program to exclude religious subject matter without engaging in viewpoint discrimination or imposing a penalty on specific beliefs. Further, Nicholas should have declined the funding if he objected to the condition placed on the Grant. Even if this Court finds that the conditions of the Astrophysics Grant are viewpoint-based, the decision to

terminate Nicholas's research did not violate the First Amendment because the Grant disburses public funds to a private entity to convey a governmental message. Thus, this Court should affirm the Fifteenth Circuit's holding.

Delmont University's dismissal of Nicholas was consistent with the Establishment Clause because the state was not obligated to pay for his clerical training. This Court's decision in *Locke v. Davey* controls in this case: the government is never compelled to financially support religious clerics, and because Nicholas wished to use the state's funds to become a sage, this precedent is dispositive. Furthermore, Nicholas cannot argue that this denial violated his Free Exercise rights, as the Grant was not a generally available benefit that was neutral with respect to religion. Lastly, this Court defers to the academic judgment of universities, and it should not stray from that tradition here. Accordingly, this Court should affirm the Fifteenth Circuit in finding that the university's termination of Nicholas's research was constitutional.

ARGUMENT

Standard of Review: The Court reviews questions of law *de novo*. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 867 (2005). When reviewing a district court's granting of a motion for summary judgment, the court must "view all facts and draw all reasonable inferences in favor of the nonmoving party." *Crawford v. Metro. Gov't of Nashville,* 555 U.S. 271, 274 n.1 (2008).

I. THE CONDITION THAT AN ASTRONOMY RESEARCH GRANT RECIPIENT CONFORM HIS COURSE OF STUDY TO EMPIRICAL SCIENTIFIC INQUIRY DOES NOT VIOLATE THE FIRST AMENDMENT.

This Court should affirm the Fifteenth Circuit's holding and find that Delmont University did not violate the First Amendment when it terminated Nicholas's research for failing to adhere to the terms of the Astrophysics Grant. The First Amendment dictates that "Congress shall make

no law . . . abridging the freedom of speech" and applies to the states through the Fourteenth Amendment. U.S. Const. amend. I; *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Consistent with the First Amendment, the government may not condition the grant of a benefit "on a basis that infringes [an individual's] constitutionally protected interests." *Perry v. Sinderman*, 408 U.S. 593, 597 (1972). However, "[w]hen the Government appropriates public funds to establish a program it is entitled to define the limits of that program." *Rust v. Sullivan*, 500 U.S. 173, 194 (1991). Therefore, Delmont University may define the limits of its program to exclude religious subject matter without engaging in viewpoint discrimination or imposing a penalty on specific beliefs. Additionally, "[w]hen the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995). Accordingly, Delmont University may impose conditions that ensure that research published in affiliation with and in promotion of its Observatory is scientific. Thus, this Court should affirm the judgment of the Fifteenth Circuit.

A. The Condition Imposed on Astrophysics Grant Recipients Constitutes Selective Government Funding, not Unconstitutional Viewpoint Discrimination.

Delmont University may selectively fund scholarship and limit the use of funds to research that is within the scope of the program it chooses to support without violating the First Amendment. *See Rust*, 500 U.S. at 194. Additionally, "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny." *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 549 (1983). Thus, the University did not violate the First Amendment when it terminated Nicholas's study because he failed to limit his research to data-backed scientific inquiry into the Pixelian Event. R. at 10.

The State of Delmont created and funded the Astrophysics Grant. R. at 5. Therefore, it may limit what the Grant recipient studies to those topics included in the Grant's statement of work without violating the recipient's constitutional rights. As this Court has long held, "[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 which seeks to deal with the problem in another way." *Rust*, 500 U.S. at 193. When the government does so, it "has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other." *Id.*; *see also Maher v. Roe*, 432 U.S. 464, 475 (1977) ("There is a basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy.").

The Court's government subsidy precedent demonstrates that the Astrophysics Grant condition is constitutionally valid. In *Rust v. Sullivan*, healthcare providers challenged the Public Health Service Act's rule that federal funds could not be used to promote or carry out Title X projects that listed abortion as a method of family planning. 500 U.S. at 178-80. The Court held the government's refusal to fund abortion-related services was not unconstitutionally denying a benefit but rather was "simply insisting that public funds be spent for the purposes for which they were authorized." *Id.* at 196. Further, the Court distinguished between conditions placed on the project and those placed on the recipient, holding that the regulations against funding abortion-related medical services governed the scope of the Title X project's activities but left grantees free to perform abortions and abortion-related services through separate, independent programs. *Id.* Accordingly, "[t]he employees' freedom of expression [was] limited during the time that they actually work[ed] for the project; but this limitation [was] a consequence of their

decision to accept employment in a project, the scope of which [was] permissibly restricted by the funding authority." *Id.* at 198–99.

In contrast, in *F.C.C. v. League of Women Voters of California*, the Court held that the Public Broadcasting Act's prohibition on editorialization by noncommercial educational broadcasting stations who received government funding violated the First Amendment. 468 U.S. 364, 398 (1984). There, the restriction imposed was directed at editorial opinion, which the Court classified as "speech that is 'indispensable to the discovery and spread of political truth.'" *Id.* at 381-83 (internal citation omitted). Moreover, under the Public Broadcasting Act, enforcement authorities needed to examine not only the content, but specifically the viewpoint expressed in the messages at issue. *Id.* at 383; *see also Rosenberger*, 515 U.S. at 831 (holding that a university impermissibly discriminated based on viewpoint, not subject matter, when it denied a religious student newspaper's funding request). Additionally, unlike the healthcare providers in *Rust* and the nonprofit organization in *Taxation With Representation*, the restriction barred stations that received any federal funding from segregating their activities so that they could still engage in privately funded editorial activity. *League of Women Voters*, 468 U.S. at 400; *Rust*, 500 U.S. at 196; *Tax'n With Representation*, 461 U.S. at 549.

Typically, when making determinations regarding recipients of government subsidies, the government may consider the subject matter of the content so long as it remains viewpoint-neutral. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 585–86 (1998). In *Finley*, the Court upheld a statutory provision allowing the Chairperson of the National Endowment for the Arts (NEA) to ensure that "artistic excellence and artistic merit are the criteria by which [grant] applications are judged" and to consider "general standards of decency and respect" when evaluating grant applications. *Id.* at 572–73. The Court held these criteria informed the

assessment of artistic merit without going so far as to disallow a particular viewpoint. *Id.* at 582. The Court also noted that, in contrast to other subsidies, the government does not indiscriminately "encourage a diversity of views from private speakers" in the context of art funding. *Id.* at 586 (quoting *Rosenberger*, 515 U.S. at 834); R. at 42. Rather, the NEA's mandate to make aesthetic judgments and its "inherently content-based 'excellence' threshold" that considered common notions of decency and respect set it apart from the subsidy at issue in *Rosenberger*. *Finley*, 524 U.S. ; *Rosenberger*, 515 U.S. at 834-35; *see also Maher*, 432 U.S. at 474 (holding the government may "make a value judgment favoring childbirth over abortion, and ... implement that judgment by the allocation of public funds.").

Delmont University's decision to fund the scientific study of the Pixelian Event did not mean Nicholas could never express the ways in which his Astrophysics Grant research affirmed his Meso-Paganist views. Instead, it meant only that he could not use his Grant-funded, University-associated position to promote those views. R. at 10-11. Like the healthcare providers in *Rust* whose abortion-related activities were limited during the time they worked for a Title X project because they accepted employment there, here too Nicholas is limited in the research he may conduct as the Astrophysics Grant's Principal Investigator. 500 U.S. at 196. As the University made clear, "Nicholas was free to conclude and publish whatever he wanted on this subject, wherever he liked, but not under the auspices of the grant-funded research." R. at 10.

Unlike in *League of Women Voters*, where editorial opinions were prohibited because of the controversial political viewpoints they expressed, the requirement that Astrophysics Grant research and subsequent publications conform to scientific norms is a subject matter distinction. 468 U.S. at 400. Meso-Paganism is not singled out for disfavored treatment: all religious content is excluded by the condition. R. at 10. This is akin to the arts funding discussed in *Finley*, where

the NEA necessarily distinguished some funding recipients from others based on aesthetic and moral standards. 524 U.S. at 586. Just as the NEA may distinguish between artistic "excellence" and mediocrity, or decency and indecency, so too may Delmont University distinguish between what may be classified as science and what constitutes religious studies. 524 U.S. at 586. So long as the University remains viewpoint neutral in its Visitorship selection process and funding conditions, the Grant may discriminate based on subject matter by requiring work products be scientific without violating the First Amendment.

Further, Delmont University selectively funded one course of study to the exclusion of another. R. at 10. In creating the Grant, Delmont University decided to fund scientific study, not religious education, and it may make selective funding decisions without discriminating based on viewpoint. R. at 10. It did not restrict Nicholas's publishing capabilities; it merely refused to continue to fund his work. Therefore, the state did not violate the First Amendment when it terminated Nicholas's research.

B. The Astrophysics Grant does not Impose an Unconstitutional Condition on Nicholas's Speech as it is Neither Coercive nor Aimed at the Suppression of Ideas, and Nicholas Should Have Declined the Grant Funding if He Wished to Publish Conclusions Outside the Scope of the Grant.

Delmont University used its Astrophysics Grant to encourage scientific research of the Pixelian Event, not to coerce the recipient into refraining from proscribed speech. As the Fifteenth Circuit held, the government may not impose a condition on speech that acts as a penalty or compels the affirmation of a belief. *Speiser v. Randall*, 357 U.S. 513, 526 (1958); R. at 36. However, "[a] refusal to fund 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); R. at

36. Therefore, Delmont University may fund scientific research exclusively without penalizing religious beliefs.

In *Speiser*, California denied World War II veterans a veterans' property-tax exemption solely for refusing to affirm that they did not advocate for the overthrow of the government. 357 U.S. at 514-15. The Court held that "to deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." *Id.* at 518. Further, the denial was "frankly aimed at the suppression of dangerous ideas." *Id.* at 519 (internal citation omitted).

This Court contrasted the statutory provisions at issue in both *Taxation With Representation* and *Finley* with that in *Speiser*. In *Taxation With Representation*, the Court held that Congress could constitutionally limit funding to organizations based on their lobbying status because Congress did not, in intent or through the effect of the law, suppress specific ideas. 461 U.S. 540, 548; R. at 40. Similarly, in *Finley*, the Court noted, "[i]f the NEA were to leverage its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoints, then we would confront a different case." 524 U.S. at 587; R. at 39. However, since the performance artists who filed suit in that case did not allege discrimination in any particular funding decision, the Court had no reason to suspect that the statute was intended to suppress disfavored ideas. *Id.* at 586-87.

In *Agency for International Development v. Alliance for Open Society International, Inc.*, the Court held that a policy requirement mandating that recipients of Leadership Act funds explicitly agree with the government's policy to oppose prostitution and sex trafficking violated the First Amendment. 570 U.S. 205, 221 (2013). That case concerned the government's ability to compel a grant recipient to adopt a particular belief as a condition of funding. *Id.* at 218. Since the policy requirement went beyond preventing recipients from using funds in a way that would

undermine the federal program, and instead required them to affirm the government's policy of eradicating prostitution, the Court held it was unconstitutional. *Id.* at 220.

The Astrophysics Grant was awarded through a rigorous application process to a single person to advance the scientific study of the Pixelian Event. R. at 2, 5. In contrast to the veterans' tax-exemption at issue in *Speiser*, the Astrophysics Grant is not held out to the public or any specific category of people as a government benefit. 357 U.S. at 514-15; R. at 2, 5. Additionally, as the Fifteenth Circuit noted, Delmont University awarded the Astrophysics Grant to Nicholas based on objective criteria, such as his demonstrated experience in the field, after publicizing the program and engaging in a competitive review process. R. at 3-5, 39. Accordingly, Delmont University did not "leverage its power to award [the] subsid[y] on the basis of subjective criteria into a penalty on disfavored viewpoints." *Finley*, 524 U.S. at 587. Instead, it aimed to prevent its grant funds from being used to muddle the separation between science and religion. R. at 57.

Likewise, Delmont University did not violate the First Amendment by conditioning funding from the Astrophysics Grant on rendering scientific conclusions that conform with the academy's consensus view because the condition was not aimed at the suppression of ideas. Rather, Delmont University sought to avoid being perceived as endorsing any religion, including but not limited to Meso-Paganism, and sought to ensure the public did not conflate religion with science. R. at 11. The University struggled to regain its academic reputation after a different grant recipient published on religious topics, and it wished to avoid a similar situation with Nicholas. R. at 53. Furthermore, unlike in *Agency for International Development*, Nicholas does not have to *adopt* the academic consensus view of the Pixelian Event or disclaim his Meso-Pagan beliefs to receive the Grant. 570 U.S. at 220. Nicholas is free to later expand upon his findings, so long as his Visitorship work abides by the terms of the Astrophysics Grant. R. at 10.

Thus, Nicholas's conclusions were only restricted when rendered under the auspices of the Astrophysics Grant and Visitorship and were neither indefinitely nor unreasonably limited.

Additionally, if Nicholas objected to the condition placed on the receipt of the Astrophysics Grant funds, the appropriate recourse would have been to decline the Visitorship. As the Fifteenth Circuit recognized, "if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds" even if the "condition may affect the recipient's exercise of its First Amendment rights." *Agency for Int'l Dev.*, 570 U.S. at 214; *see also Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 59 (2006) ("*FAIR*") (upholding the Solomon Amendment, which prevents universities from receiving federal funds if they deny military recruiters access equal to that provided to other recruiters, and noting that the universities were free to decline the federal funds); R. at 40-41.

Here, the condition of the Grant was clearly laid out, which Nicholas agreed to when he accepted the Visitorship and adhered to during his two years of work at the observatory. R. at 5. Just as the nongovernmental organizations in *Agency for International Development* and the law schools in *FAIR* were free to accept the government's condition or decline the federal funding, Nicholas could choose whether to accept the Grant and conform to its scientific requirement. *Agency for Int'l Dev.*, 570 U.S. at 214; *FAIR*, 547 U.S. at 59; R. at 5. Nicholas accepted the Grant, fully aware of its scientific standards, and complied with the condition until the publication of his article in Fall 2023. R. at 5-8. Indeed, Nicholas did not object to the condition until he brought this action in Spring 2024 after his research was terminated. R. at 11-12. Additionally, Nicholas could have studied the Pixelian Event without accepting the Astrophysics Grant or published his conclusions elsewhere so long as it was not under the auspices of Grant-funded research. R. at 10, 42. Thus, because Nicholas could have declined the Astrophysics

Grant funding, the fact that he chose not to do so does not make the condition of the Grant unconstitutional.

C. Even if this Court Finds the Astrophysics Grant Discriminates Based on Viewpoint, Delmont University did not Violate the First Amendment Because It Intended to Distribute a Government Message, not Facilitate Private Speech.

Delmont University may discriminate based on viewpoint when evaluating the conclusions published through its Grant program because the University used the Grant program to distribute its own message and did not intend to facilitate private speech. The Fifteenth Circuit correctly held that viewpoint-based funding decisions are constitutional when the government is itself the speaker, or when it "use[s] private speakers to transmit specific information pertaining to its own program." *Bd. of Regents of Univ. of Wis. Sys. v. Southworth,* 529 U.S. 217, 229, 235 (2000); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 542 (2001); R. at 42. Furthermore, "[w]hen the government disburses public funds to private entities to convey a governmental message, it may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Rosenberger*, 515 U.S. at 833. Here, Delmont University tasked the recipient of its Grant with promoting the University's preferred message of peer-reviewed, scientific research regarding the Pixelian Event. R. at 10. Therefore, Delmont University may place viewpoint-based criteria on the conclusions published by its grant recipients while they engage in grant-funded work.

In *Rosenberger*, this Court held that a university engaged in unconstitutional viewpoint discrimination by denying funds to a Christian student newspaper. 515 U.S. at 825-27. However, the Court noted that the university took steps to maintain the distinction between its own favored speech and private speech. *Id.* at 824, 834-35. Specifically, each recognized student organization

signed an agreement that they were not part of or controlled by the university and that the university neither approved of nor was responsible for the organizations' goals, acts, or omissions. *Id.* Thus, while viewpoint-based restrictions are improper when a university expends funds to encourage a diversity of views from private speakers, they are permissible when the university itself speaks or when it subsidizes the transmission of a message it favors. *Id.* at 834; *see also Legal Servs. Corp.*, 531 U.S. at 542 (finding restrictions on the legal arguments made by lawyers who received federal funding to be unconstitutional because the "program was designed to facilitate private speech, not to promote a governmental message."); R. at 42.

Conversely, the Court held in *Rust* that the government intended to promote its own family-planning message using Title X funds, not facilitate diverse viewpoints conveyed through private speech. 500 U.S. at 198. Fund recipients could engage in abortion-related activities, but only outside of their federally funded work, because "the Secretary . . . required a certain degree of separation from the Title X project in order to ensure the integrity of the federally funded program." *Id.* In doing so, the government "used private speakers to transmit specific information pertaining to its own program," and was therefore permitted to place viewpoint-based limitations on the speech of funding recipients within the confines of the program. *Rosenberger*, 515 U.S. at 833 (describing *Rust*'s holding as relating to the dissemination of government messages through private recipients of federal funding).

Here, the Visitorship was specifically created to advance scientific study of the Pixelian Event on behalf of the University and its Observatory. R. at 1. Unlike the university in *Rosenberger*, Delmont University made no effort to separate itself from the conclusions published by the Grant recipient. 515 U.S. at 824, 834-35. The Astrophysics Grant provided a salary for the Principal Investigator to publish "scientific, peer-reviewed articles related to" the

Pixelian Event "and a final summative monograph on the event along with the raw data upon which conclusions were reached to be published by *The University of Delmont Press*." R. at 5 (emphasis added). Neither did the Astrophysics Grant Program attempt to limit the speech of professionals representing private clients, like the program in *Legal Servs. Corp*. 531 U.S. at 542. Instead, it was designed to promote the astronomical and scientific capabilities of the Observatory through the publication of scientifically collected data. R. at 5.

The Astrophysics Grant was designed to fund Delmont University's efforts to make the Observatory a leading center for celestial study. R. at 4-5, 42. To do so, the University imposed strict scientific standards on the Grant recipient to ensure that the study and its conclusions remained within the scope of the project and the message the University itself wished to convey. R. at 4-5. Therefore, this Court should hold that the condition of the Astrophysics Grant is constitutional, even if that condition discriminates based on viewpoint.

II. DELMONT UNIVERSITY HAD AN ANTI-ESTABLISHMENT INTEREST IN TERMINATING PETITIONER'S VISITORSHIP WHEN HE EXPRESSED INTEREST IN USING HIS RESEARCH TO SUPPORT RELIGIOUS STUDIES.

This Court should affirm the Fifteenth Circuit's decision and find that Delmont University acted in accordance with the Establishment Clause when it terminated Nicholas's research. The First Amendment dictates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" U.S. Const. amend. I; *See Everson v. Bd. of Ed. of Ewing Tp.*, 330 U.S. 1, 8 (1947) (applying the Establishment and Free Exercise Clauses to the states via the Fourteenth Amendment).

The Establishment Clause of the First Amendment ensures that "neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious

organizations or groups and vice versa." *Everson*, 330 U.S. at 16. A key principle underlying this proposition is that the government does not have to materially assist clergy. *See Locke v. Davey*, 540 U.S. 712, 722 (2004). This Court has clarified that the government may not deny neutral, otherwise available benefits to religious individuals and groups in the name of the Establishment Clause without violating the Free Exercise Clause. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017); *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. ____, 140 S. Ct. 2246, 2261 (2020); *Carson v. Makin*, 596 U.S. 767, 789 (2022). However, these decisions did not affect the right of the states to decline to fund the clergy, which is one of the oldest traditions in American constitutional law. *See Locke*, 540 U.S. at 722.

Because Nicholas intended to use his research to pursue a devotional degree, the Fifteenth Circuit was correct to hold that the University was within its rights to terminate his research under *Locke*. R. at 57. However, even if *Locke* is not found to be dispositive in this case, the university was still free to terminate Nicholas's research because the research grant was not a neutral, generally available public benefit, unlike the benefits at issue in *Trinity Lutheran*, *Espinoza*, and *Carson*. Finally, this Court should defer to the University as an academic institution and affirm the Fifteenth Circuit's judgment.

A. The University was Constitutionally Permitted to Terminate Nicholas's Research Because He Expressed Interest in Using his State-Funded Research Grant to Obtain a Devotional Religious Degree.

Delmont University was permitted to terminate Nicholas's research because he expressed interest in using state-provided funding in support of his application to become a cleric. R. at 57. Simply put, states are under no obligation to provide monetary support to the clergy of any faith. *Locke*, 540 U.S. at 722, 725; R. at 48 ("We consider Locke's holding to be a stand alone rule.").

In *Locke*, scholarship recipients were allowed to use state funding to attend an accredited tertiary academic institution provided they did not use the funding to pursue a "devotional" degree. *Id.* at 715-16. A beneficiary of the program who hoped to become a pastor argued that Washington's prohibition against clerical study violated his Establishment and Free Exercise Clause rights. *Id.* at 717-18. The Supreme Court ultimately rejected this challenge and held that Washington *could* have funded devotional education but was not required to, given the historical tradition of preventing compulsory governmental support for clerics. *Id.* at 719, 722-24. *Locke*'s holding reflects one of the longest standing principles in American law: the government can decline to provide financial support for clerical education. *See id.* at 713.

Given the remarkable similarity between the two cases, Nicholas's claim cannot survive the application of *Locke* to its facts. Just like the plaintiff in *Locke*, there is strong evidence that Nicholas intends to use his academic work at the observatory to become a cleric. 540 U.S. at 717-18; R. at 57. While Nicholas did equivocate in his affidavit as to whether he intends to become a Sage, there is convincing evidence he ultimately intends to pursue this path. *See* R. at 57. For example, while Nicholas testified about how he hoped his studies would facilitate his "personal and professional growth," he also discussed his longstanding interest in becoming a Meso-Pagan First Order Sage. R. at 57. The District Court—which ruled in his favor—stated that Nicholas hoped his findings could be used to support his application to become a Sage. R. at 9. Furthermore, he posted his findings online and noted that the Sage community greeted them with enthusiasm, imploring him to apply to become a sage. R. at 57. Finally, he admitted that he is "strongly considering" using his state-funded research to apply to become a sage. R. at 57. Thus, even if he has not formally hit the button on application materials, his desire to use his research to become a sage was more than just a passing interest.

Here, Delmont University has merely acted pursuant to the same interest as Washington. Nicholas—just like the plaintiff in *Locke*—wants to use state resources to become a member of the clergy. 540 U.S. at 717; R. at 57. The University does not want to facilitate the pursuit of this endeavor. *See* R. at 11. Compelling this financial aid would constitute inappropriate support for a religious denomination. *Locke*, 540 U.S. at 722, 725. Respondent was comfortably within its rights to terminate Nicholas's research once it became clear he was going to use his findings in support of his application to become a cleric.

B. Delmont University's Grant was not a Neutral, Generally Available Benefit, and Therefore Terminating the Grant did not Violate Nicholas's Rights.

This Court should find that Delmont University's grant was not a neutral, generally available benefit and therefore the school could terminate it without violating Nicholas's Free Exercise Rights. This Court has long held that states cannot deny generally available public benefits to religious groups or organizations in the name of the Establishment Clause without violating those same individuals' Free Exercise rights. *Everson*, 330 U.S. at 18; *Trinity Lutheran*, 582 U.S. at 466; *Espinoza*, 140 S. Ct. at 2261; *Carson*, 596 U.S. at 789. A generally available benefit typically involves public benefits and welfare grants that are neutral with respect to religion and that the entire public is entitled to enjoy. *See Everson*, 330 U.S. at 3; *Trinity Lutheran*, 582 U.S. at 453-54; *Espinoza*, 140 S. Ct. at 2251; *Carson*, 596 U.S. at 771.

The university was justified in terminating Nicholas because the research grant is too targeted to merit Free Exercise Clause protection. It has long been recognized that there is extensive interplay between the First Amendment's religion clauses. As Justice Gorsuch noted in his *Espinoza* concurrence, "this case involves the Free Exercise Clause, not the Establishment Clause. But as in all cases involving a state actor, the modern understanding of the Establishment

Clause is a 'brooding omnipresence.'" *Espinoza*, 140 S. Ct. at 2263 (Gorsuch, J., concurring). Overzealous efforts to separate church and state actually violate the rights guaranteed by the Free Exercise Clause. *Everson*, 330 U.S. at 18. This Court staked out this principle in *Everson*, where a New Jersey program compensating parents for their children's bus fare to school was found to be unconstitutional because it excluded those attending Catholic parochial schools for fear of violating the Establishment Clause. *Id.* Importantly, New Jersey's denial of these benefits to those attending Catholic schools was unconstitutional because the benefit was so general: when the benefit was offered to everyone, Catholic families could not be excluded. *Id.* at 16.

Recently, the Supreme Court has expounded upon this idea in more detail. In *Trinity Lutheran*, the Supreme Court considered a Missouri program that provided recycled tires to schools and daycare centers for playground surfacing. 582 U.S. at 453. Missouri enforced a blanket ban on state funding for religious organizations. *Id.* A church-run daycare sued, arguing it was unconstitutionally precluded from the program's benefits. *Id.* at 455-56. The Court held that because the benefit was available to everyone, meaning it was religiously neutral, the state could not disqualify potential participants based upon religious status. *Id.* at 466-67.

In *Espinoza* and *Carson*, the Supreme Court was faced with a similar question in the realm of state scholarship aid. In both cases—the first from Montana, and the second from Maine—a state offered tuition assistance to students but mandated that the aid could not be spent at a religious institution. *Espinoza*, 140 S. Ct. at 2251; *Carson*, 596 U.S. at 771.[1] The holding and rationale of both decisions closely paralleled *Everson*: "we have repeatedly held that a state violates the Free Exercise Clause when it excludes religious observers from otherwise available

[1] The details of how the programs were operated differed slightly, but at root, both involved state help in paying tuition costs at private schools. *Espinoza*, 140 S. Ct. at 2251; *Carson*, 596 U.S. at 773-75.

public benefits." *Carson*, 596 U.S. at 778; *see also Espinoza* 140 S. Ct. at 2254 (employing nearly identical language).

In all three of the recent cases discussed above, the Court distinguished *Locke* by asserting that the religious prohibitions were unconstitutional because they penalized potential recipients of government money for their religious status, as opposed to penalizing a religious use of the funds. *Trinity Lutheran*, 582 U.S. at 464; *Espinoza*, 140 S. Ct. at 2257-58; *Carson*, 596 U.S. at 788-89. In *Locke*, the Court also recognized that Washington was free to pick and choose what kinds of studies, religious or secular, it wanted to fund; "the State ha[d] merely chosen not to fund a distinct category of instruction." 540 U.S. at 721.

The programs at issue in the *Everson* line of cases tend to involve public programs with few strings attached, such as transit subsidies, tuition aid, and playground construction. *See Everson*, 330 U.S. at 3; *Trinity Lutheran*, 582 U.S. at 453-54; *Espinoza*, 140 S. Ct. at 2251; *Carson*, 596 U.S. at 771. In the current case, Nicholas's Grant and Visitorship were not generally available. R. at 1. The Grant was designed with the "specific purpose of advancing scientific study of the astrophysical phenomenon, known worldwide as the 'Pixelian Event.'" R. at 1. The school sought an established scientist to carry out a specific task. R. at 1-2. Indeed, the phrase "specific purpose"—used to describe the contours of the hoped-for study—appears at least two times in the district court's decision in favor of Nicholas. R. at 1, 5.

Furthermore, the sheer rarity of the Pixelian Event indicates that to describe the grant as "generally available" misses the mark; whereas presumably tens of millions of students attend high schools or play on playgrounds each day, the astronomical phenomenon to be observed is a once-in-a-life time event. R. at 1. In other words, unlike a bus subsidy or tuition aid, not everyone was entitled to this benefit; only researchers who were planning to study the Pixelian

Event could qualify for it. *See Everson*, 330 U.S. at 18; *Carson*, 596 U.S. at 773-75; R. at 1. This case might be different if the grant at issue was a regularly awarded grant for general academic research, but it was not. R. at 1. The subject matter of the Grant was unique, and the University sought to accomplish a specific objective. *See* R. at 1.

Relatedly, the Astrophysics Grant conditions were not religiously neutral. The school expected a rigorous *scientific* study of the Pixelian Event. R. at 1. Indeed, one of the academy's objections to the study's findings was that Nicholas's conclusions were not *scientifically* provable. R. at 9. Again, this case might be different if, for instance, the school comprehensively studied all elements of the Pixelian Event including its anthropological dimensions. As it was, the school was only interested in the science. R. at 2. Furthermore, the Supreme Court held in *Locke* that states are welcome to fund the study of certain subjects at the expense of others. *Locke*, 540 U.S. at 721. That is, in effect, what Delmont University has done here: the school wanted to fund an astronomy study, not a religious one. *See* R. at 1. Accordingly, this Court should affirm the ruling of the Fifteenth Circuit.

C. This Court Should Defer to the University's Academic Judgment to Terminate Nicholas's Research.

This Court should also defer to the University's academic and administrative decision to dismiss Nicholas. For decades, this Court has held that courts should both let universities make their own decisions regarding academic matters and defer to those decisions once they are made. *See Grutter v. Bollinger*, 539 U.S. 306, 328-29 (2003); *see also Bd. of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 89-91 (1978); *Widmar v. Vincent*, 454 U.S. 263, 276 (1981).

The Supreme Court has long recognized that "universities occupy a special niche in our constitutional tradition." *Grutter*, 539 U.S. at 329. In short, courts hold that academic decision-

making is best left to school administrators. *See Horowitz*, 435 U.S. at 90. For example, in *Horowitz*, a medical school student alleged that her Due Process rights were violated because she was dismissed for academic reasons. *Id.* at 79-80. The Supreme Court ultimately rejected her challenge, holding that an academic dismissal was too "subjective and evaluative" a judgment for a court to make. *Id.* at 90. The Court compared the decision to dismiss the student to a professor deciding on a student's grade, and ultimately decided that this weighty determination was ill-suited to "the procedural tools of judicial or administrative decisionmaking." *Id.* This Court has also shown a reluctance to wade into administrative disputes taking place on university campuses; in its decision in *Widmar*, which involved a dispute as to whether a public university could rent out space to religious groups, the Court refused to "question the right of the University to make academic judgments as to how best to allocate scarce resources." 454 U.S. at 276.

In the present case, Nicholas's research was terminated for academic reasons. R. at 11. He agreed to take the job to conduct a scientific study, but his research adopted an overtly religious element. R. at 10. Neither side disputes this underlying fact. The school, in a sense, was not getting what it wanted or bargained for from an academic perspective, and therefore terminated Nicholas's research. R. at 11. It was uninterested in a religious study. R. at 10. Courts historically leave academic decisions to educators. *See Horowitz*, 435 U.S. at 90. The best course of action in this case would be to continue to follow this longstanding practice.

If this Court were to reverse the decision of the Fifteenth Circuit, it would effectively tell the school and the academics who work there what they should be studying. The freedom of thought and expression that are critical to the university's mission would be inappropriately trampled. *See Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (describing the "the four essential freedoms of a university—to determine for itself on academic

grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.") (internal quotation marks and citations omitted). Additionally, the University does not have unlimited financial resources. If this Court dictates that Delmont University must reemploy Nicholas, it will tell the school how to "allocate scarce resources" and will preclude it from pursuing more fruitful research. *See Widmar*, 454 U.S. at 276. This Court should defer to the University's academic decisions and affirm the judgment of the Fifteenth Circuit.

CONCLUSION

Delmont University created its Astrophysics Grant to foster the profound academic and scientific work that would promote its state-of-the-art observatory. To further that goal, the University constitutionally limited the use of its Grant funds to support empirical, scientific research. The school planned to study a celestial event; it did not wish to promote an individual grant recipient's clerical aspiration. Dr. Cooper Nicholas's research strayed beyond science, and he sought to use his Grant-funded studies to advance his religious goals. Therefore, Delmont University's termination of his research was consistent with the First Amendment, and this Court should affirm the judgment of the Fifteenth Circuit.

Respectfully submitted,

/s/ Team 16

Team 16

Counsel for Respondents

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