No. 23-CV-1981

IN THE

SUPREME COURT OF THE UNITED STATES

COOPER NICHOLAS,
Appellant,
v.

STATE OF DELMONT and
DELMONT UNIVERSITY,
Appellee.

On Writ of Certiorari from the
United States Court of Appeals
For the Fifteenth Circuit

BRIEF FOR THE RESPONDENT

Team 18
Attorneys for Respondent

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED

I. Has Delmont University unconstitutionally restricted Dr. Nicholas' speech by requiring that his use of the Astrophysics Grant conform to the academic consensus view of a scientific study?

II. Does the state of Delmont and Delmont University run afoul of the Establishment Clause when research grants, funded by public tax dollars, are administered to a principal investigator who intends to use published works to promote their admission to religious leadership?

OPINIONS BELOW

The opinion of the United States District Court for the District of Delmont, Mountainside Division, is unpublished and may be found at *Cooper Nicholas, Ph.D. v. State of Delmont and Delmont and Delmont University*, C.A. No. 23-CV-1981. The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *State of Delmont and Delmont University v. Cooper Nicholas, Ph.D.*, C.A. No. 23-CV-1981.

STATEMENT OF JURISDICTION

The decision by the United States Circuit Court of Appeals for the Fifteenth Circuit entered judgment for the state of Delmont and Delmont University, granting summary judgment and reversing the decision of the United States District Court for the District of Delmont, Mountainside Division. The Petitioner, Cooper Nicholas, Ph.D., filed a timely Petition for Grant of writ of certiorari. This Court has jurisdiction for review by writ of certiorari under 12 U.S.C. section 1254(1).

STATEMENT OF THE FACTS

I. Delmont University and the Astrophysics Grant

Delmont University is a publicly funded university that strives to promote the highest level of scientific research and discourse. In 2020, the University opened The GeoPlanus Observatory on Mt. Delmont under faculty director Dr. Herbert Van Pelt. R. at 4. This location is widely considered an ideal location for study of celestial phenomena in the northern hemisphere. *Id.*

With this new state-of-the-art observatory, the University was presented with a rare opportunity to establish itself as "one of the foremost centers for celestial study in the world." Seawall Aff. ¶ 4. The Pixelian Comet, which only appears once every ninety-seven

years, was set to appear in Spring of 2023. R. at 6. To make the most of this opportunity, the University created an Astrophysics Grant to be awarded to a visiting scholar to research this "Pixelian Event." This Astrophysics Grant was published consistent with standard protocols in 2021. *Id*. at 5. It would provide for the "principal investigator" to receive "a salary, use of Observatory facilities and equipment, funding of research assistants, and incidental costs associated with the study," as well as cover "all costs associated with publication of scientific, peer-reviewed articles related to the event, as budgeted, 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." *Id*.

One condition on the Astrophysics Grant was that the study and conclusions must "conform to the academic community consensus view of a scientific study." *Id*. The University included this condition for two reasons. First, it was a response to a recent trend in academia in which academic institutions intermingled religious ideology with scientific research. Seawall Aff. ¶ 7. This led to public confusion and labeling certain institutions as "religious." Delmont University wanted no part in this; it therefore elected to strictly conform to the academic consensus view for purposes of the Astrophysics Grant. *Id*.

Second, this condition sought to preemptively avoid a type of conflict that had arisen in the University's Anthropology Department merely two years before. A grant recipient took strong religious positions and as a result the University lost face with both donors and the academic community. *Id* at 9. Inclusion of the condition on the Astrophysics Grant was meant to prevent the kind of confusion it had experienced in the past, as well as to promote the academic consensus approach that it felt was lacking in some modern institutions.

II. Dr. Nicholas and his Beliefs

Delmont University awarded the Astrophysics Grant to the well-respected astrophysicist, Dr. Cooper Nicholas. Dr. Nicholas graduated from Delmont University and received a doctorate from Berkeley. R. at 2. Over his career he has received a number of academic appointments, visitorships, and grants from around the world. *Id*. Prior to receiving the Astrophysics Grant, he was the scholar in residence of the Ptolemy Foundation. *Id*. These accolades along with his skill in research gained him the reputation as a "wunderkind" in the field. *Id* at 5.

Dr. Nicholas's aspirations, however, exceeded merely academic research. Dr. Nicholas is a devout follower of the Meso-Pagan faith, and several aspects of this faith influence and shape Dr. Nicholas' views relating to his research. R. at 4. Among these is the belief in the "lifeforce," which is a force connecting all things in the universe. Dr. Nicholas, as well as the religious hierarchy called "Sages," believe that there is a link between spectral phenomena and glyphs and imagery common in the religion. R. at 4. Dr. Nicholas pursued the Astrophysics Grant to study the Pixelian Event because it could shed light on this theory of a "lifeforce." Further, Dr. Nicholas believed that his findings under the Astrophysics Grant could help him become one of these "Sages" in the Meso-Pagan clergy. Nicholas Aff. ¶ 13.

III. Early Findings under the Astrophysics Grant

The first several months of research under the Astrophysics Grant went smoothly. Dr. Nicholas researched the Pixelian Event and reported his findings in accord with the conditions of the Grant. While still conducting his research, he published interim findings in the peer-reviewed publication *Ad Astra*. R. at 6. These findings were widely well received in academic circles. In the spring of 2023, the Pixelian Event itself garnered great popularity for the Observatory and Dr. Nicholas. *Id*.

Six months after the Pixelian Event, Dr. Nicholas published his interim findings in *Ad Astra* as he had done before. *Id.* However, the findings in this article were heavily influenced by

his religious belief in a "lifeforce" and Meso-American theories. Dr. Nicholas had begun using his research to suggest that Meso-Pagan glyphs suggested the existence of the "lifeforce" and to promote the highly controversial "Charged Universe Theory;" a fringe theory that would further support the existence of the "lifeforce." R. at 7. This Charge Universe Theory has little support in the academic community and it does not conform to the scientific academic consensus view of the makeup of the cosmos, as required by the Astrophysics Grant. *Id*.

The controversy surrounding these conclusions was so pronounced that it led to conflict between Dr. Nicholas and *Ad Astra*'s editor, Dr. Elizabeth Ashmore. Dr. Ashmore felt that the view was simply too "extreme" to be endorsed by *Ad Astra*. R. at 8. Dr. Ashmore eventually agreed to publish the findings, but with a preface indicating that the views were Dr. Nicholas' own and not endorsed by *Ad Astra*. *Id*.

IV. Conflict Arising from Dr. Nicholas' Research

Delmont University immediately felt the negative impact of Dr. Nicholas' promotion of controversial views in *Ad Astra*. The press spoke negatively of the University for supporting the view, giving it the reputation of following "weird science." *Id* at 9. The University lost support from donors and the politicians who secured support for the Astrophysics Grant in the first place. *Id*. The University lost applicants. *Id*. Overall, the University risked becoming synonymous with the exact thing it had been trying to combat in establishing the Astrophysics Grant; it was accused of blurring the line between science and religion in the realm of scientific research.

The University President, Meriam Seawall, responded by notifying Dr. Nicholas that Delmont University could not be seen as endorsing such controversial views. R. at 10. President Seawall told Dr. Nicholas that maintaining funding was contingent on limiting his research to those which comported to the Astrophysics Grant. Dr. Nicholas responded claiming that the University could not restrict him in this way, and that the University did not hold such

restrictions against those espousing other pagan views. *Id*. President Seawall pointed out that the University was not preventing him from promoting his personal views, they were only limiting his use of funds from the Astrophysics Grant to reasonable parameters necessary to ensure the university was not endorsing a particular belief system. *Id.* Dr. Nicholas then claimed that none of his research was unscientific, and to remove the funding at this point would throw his whole project into jeopardy. *Id* at 11.

The University sent one last email giving a date by which he must agree to the terms to keep funding. *Id*. This email merely reiterated the condition that had been part of the Astrophysics Grant since it had first been established. Dr. Nicholas countered that the school should instead recognize his findings as scientific. *Id*. Finally, the University removed Dr. Nicholas's security admittance and communicated to the media that this was done because the University and Dr. Nicholas had a fundamental disagreement over the meaning of science, and the University could not risk maintaining this position. *Id.*

PROCEDURAL HISTORY

Dr. Nicholas filed suit against the State of Delmont and Delmont University. The matter was brought before the U.S. District Court for the District of Delmont Mountainside Division where the Plaintiff requested immediate injunctive relief and reinstatement of all the rights and privileges associated with the Astrophysics Grant. R. at 12. Dr. Nicholas stated that the condition in the Grant unconstitutionally violates his free speech protections under the First Amendment. *Id*. Delmont denied any free speech violations and argued that continued administering of the Grant would result in the State and the University violating the Establishment Clause of the First Amendment. *Id.* The District court found for Dr. Nicholas on both issues, finding that the condition violated Dr. Nicholas' free speech protections and that the intent to use the published work associated with the Grant for application to Meso-Pagan clergy was too attenuated to

amount to a breach of the Establishment Clause. The District court granted summary judgment and their requested injunction. R. at 30.

Delmont appealed to the Fifteenth Circuit Appellate Court. R. at 32. They argued that the District court had erred in their granting summary judgment to Dr. Nicholas on both the free speech and Establishment Clause issues. Id. The Fifteenth Circuit found in favor of the State of Delmont and Delmont University, granting them summary judgment and reversing the district court decision. R. at 51. The Appellate court reasoned that because the conditions upon which the grant was offered did not deny any benefit based on viewpoint, impose penalty, act unduly coercive, or suppress ideas, the condition in the Astrophysics Grant was constitutional. R. at 34-44. Additionally, the court found that the continued use of the Grant by Dr. Nicholas would result in a proxy state sponsorship of clergy, a well-recognized unconstitutional use of government funds and a violation of the Establishment Clause. R. At 45-50.

Dr. Nicholas petitioned the Supreme Court of the United States to grant review of this matter on writ of certiorari. R. at 59. His petition posited two questions, the topics addressed in both lower courts, namely issues regarding conditions on free speech and implications of state action on the establishment clause. Id.

SUMMARY OF THE ARGUMENT

The fundamental issue at stake here is how public funds should be allocated. The University maintains the position that public funds should be spent reasonably and responsibly in accordance with values meant to further a public policy goal. Dr. Nicholas, on the other hand, feels that public funds should be made available to those who would question these goals and promote fringe views.

Dr. Nicholas claims that the University has withheld funding in a discriminatory, penalizing, and coercive way. This cannot be further from the truth. The University has

implemented a value judgment in spending its funds for a public purpose, and has merely taken measures to ensure that these funds are spent in accordance with this goal. To allow Dr. Nicholas to spend these public funds and use these public resources outside the confines of the Astrophysics Grant would not merely waste the funds; it would cause significant harm to the objectives that the Grant was initially meant to forward.

In defense of the University's decision to cut funding to the Petitioners research, the State and University maintain that the continued funding of the grant would amount to a violation of anti-establishment protections. The First Amendment has been a long-held protection against the state promotion and establishment of religious ideology. The choice to cease funding to Dr. Nicholas' Grant was driven not in a way as to prejudice against his beliefs or the beliefs of the Meso-Pagan faith. The decision was a careful determination by the State and the University as to not appear as a state sponsorship clergy or other endeavors into religious leadership.

When Dr. Nicholas indicated through his own statements that conclusions from his research may be used in promotion of his application to become a member of Meso-Pagan leadership, the State and the University needed to act to limit the use of public funds to promote his personal religious convictions. By continuing to administer these public funds in a manner which could only be described as a state promotion of the clergy, the State and the University themselves would be in active violation of establishment protections afforded to all peoples of all religious backgrounds. The reasoning behind this decision is backed behind centuries of historical evidence prohibiting the State from sponsoring members of the clergy, along with this Court's own jurisprudence coming to the same conclusion. It is only by ceasing the funding of this research, which may be used in promotion of an individual's efforts to join religious leadership, that the State and the University may ensure the rights of all people against the State establishment of religion.

ARGUMENT

I. The University of Delmont has not unconstitutionally restricted Dr. Nicholas' speech by requiring that is use of the Astrophysics Grant conform to the academic consensus view of a scientific study.

A. The condition does not infringe on Dr. Nicholas' free speech because he is allowed to maintain his personal views outside the scope of the Astrophysics Grant.

Central to Dr. Nicholas' argument that his free speech is being silenced through viewpoint discrimination or suppression of ideas. Dr. Nicholas also argues that his speech is being used against him in a coercive or penalizing way. However, the key fact that weakens all these arguments is that the condition in the Astrophysics Grant only applies to Dr. Nicholas' work under the Grant. It does not concern his personal speech or acts.

1. The condition imposed by Delmont University is not discriminatory against certain viewpoints.

While the government cannot discriminate against groups in its funding based on the group's viewpoint, it may be selective in where it spends public money. As the Court said in *Rust v. Sullivan*, "[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." 500 U.S. 173, 193 (1991). The distinction between impermissible viewpoint discrimination and permissible funding selectivity is illustrated by a comparison of *Rust* and *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*. 570 U.S. 205 (2013). If the regulation on spending in question does regulate pure speech, however, strict scrutiny must be applied. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992).

In *Rust*, the Court analyzed a challenge to an HHS restriction on allocation of Title X funding to certain groups for family planning counseling. 500 U.S. at 180. The restriction stated that no funding may be appropriated to programs which counseled abortion as a method for

family planning. Opposing groups characterized this regulation as viewpoint discrimination against groups with pro-abortion views. *Id* at 192. The Court upheld the regulation, pointing to the crucial fact that groups receiving funding were not prevented from holding pro-abortion views, or even engaging in pro-abortion activities; they were merely restricted from furthering this position as part of programs receiving federal funds. *Id* at 198-199.

This is in sharp contrast to the finding in *Agency for Int'l Dev*. In this case, federal funds were denied to international groups that did not hold explicitly anti-prostitution views. The regulation explicitly stated that funds could not be available to any "group or organization that does not have a policy explicitly opposing prostitution and sex trafficking." *Agency for Int'l Dev.*, 570 U.S. at 210. Herein lies the crucial distinction from *Rust*; the regulation applied to viewpoints held outside the spending of the public funding. This requirement explicitly entails the government "telling people what they must say," which violates the First Amendment. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 61 (2006) (citing *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) and *Wooley v. Maynard*, 430 U.S. 705, 717 (1977)). The key distinction between this and a permissible restriction like in *Rust* is that the views outside the scope of the funding were directly implicated. The restrictions in *Rust* were placed on the spending, not on the groups receiving them. 570 U.S. at 196. For this reason, the restriction was discriminatory based on viewpoint.

The Astrophysics Grant more closely resembles the kind of permissible restriction discussed in *Rust* rather than *Agency for Int'l Dev*.. As in *Rust*, the restriction is on the Grant itself, rather than the recipient Dr. Nicholas. *Id*. There is no limit on what Dr. Nicholas may say or do outside the scope of the Grant; the restriction only applies to how he uses the government funding. Much like the how groups in *Rust* were not stopped from holding whatever views they held outside Title X projects, Dr. Nicholas may use government funding to publish whatever

findings he makes in line with the academic consensus. Outside of the scope of the Astrophysics Grant, he may publish whatever he chooses. For this reason, the Grant does not discriminate based on viewpoint.

Even if the Court were to apply strict scrutiny, the restriction would pass. In order to pass strict scrutiny, the restriction must be narrowly tailored to further a substantial government interest. *R.A.V*, 505 U.S. at 395. The government interest is to prevent public confusion over scientific research and religion. Seawall Aff. ¶7. This is an increasingly important and substantial issue is light of recent shifts in academic research. *Id*. The restriction is narrowly tailored to serve this end because all that the University is restricting is how its Astrophysics Grant money is spent; Dr. Nicholas is free to use the funds as he needs, within the broad confines of "the academic community's consensus." R. at 5. He is not restricted in his speech any further than this, and he may speak as he sees fit outside the confines of the Astrophysics Grant. Therefore, strict scrutiny is satisfied.

In conclusion, Dr. Nicholas is not discriminated against based on his viewpoint because his viewpoint is hardly even brought into question. The University has not made issue of what Dr. Nicholas' viewpoint, only how its Grant funds are allocated. Alternatively, the condition passes strict scrutiny because it is sufficiently narrowly tailored to further the substantial government interest of promoting an academic consensus view in its research.

2. *Delmont University is not suppressing Dr. Nicholas' ideas.*

The University is not suppressing Dr. Nicholas's ideas because it is not using its power to subsidize in an objective way to Dr. Nicholas' ideas. This scenario was discussed in *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998) . In *Finley*, the issue was whether the National Endowment for the Arts was impermissibly withholding funding from certain individuals to suppress their artistic ideas. *Id* at 580. The Court stated that it would be

impermissible if, based on the language of the statute granting subsidizing power, the National Endowment for the Arts "leverage[d] its power to award subsidies on the basis of subjective criteria into a penalty on disfavored viewpoint." *Id* at 587. In other words, the government may not use its spending power to create subjective criteria and then use that criteria as a pretense to penalize disfavored views.

The University has created no such subjective criteria relating to how the Astrophysics Grant is allocated. The University initially gave the Astrophysics Grant to Dr. Nicholas according to standard protocols because of his reputation and achievements in the field. R. at 5. Dr. Nicholas objectively appeared to be best suited to use the Grant to promote the goals the University laid out; namely, promotion of the GeoPlanus Observatory through use of an academic approach to scientific inquiry. *Id*.

The University's position never changed throughout the course of the Astrophysics Grant. Dr. Nicholas's action in using the Grant, however, changed radically from following academically accepted standards to promotion of religious ideology. Even Dr. Ashmore of *Ad Astra*, who is not affiliated with the University, saw Dr. Nicholas's actions as deviating from the academic consensus. *Id.* at 8. This shows that the University was not merely using the condition as a pretense to silence Dr. Nicholas; even third parties recognized Dr. Nicholas's conclusions as an affront to the academic consensus. As the University was objective in selection its selection of Dr. Nicholas and enforcement of the Grant's condition, it did not leverage the Grant to suppress Dr. Nicholas' ideas.

3. *Delmont University is not coercing Dr. Nicholas' speech.*

The University is its condition in the Astrophysics Grant was not coercive because it did not force Dr. Nicholas into a position of hypocrisy. There are two primary factors showing that the condition is not coercive. First, Dr. Nicholas did not previously rely on the funding before the

condition was imposed. Second, the condition does not compel Dr. Nicholas to maintain a certain position outside his activities related to the Astrophysics Grant.

First, Dr. Nicholas did not previously rely on the funding before the condition was imposed. This is a key factor distinguishing the present case from *Agency for Int'l Dev.*. 570 U.S. 205 (2013). In *Agency for Int'l Dev*., groups subject to the anti-prostitution policy requirement had previously been relying on that funding before the restriction was put in place. The Court found this to be coercive because the new condition would deprive them of old funding. 570 U.S. at 210-211. Maintaining their federal funding would force these groups to hypocritically change their stance on prostitution.

This is not so in the present case. Dr. Nicholas knew of the condition when the Astrophysics Grant was established. R. at 5. Maintaining funding did not require him to shift his position on any issue; he himself shifted his position away from the academic consensus toward the fringe Charged Universe Theory after the Pixelian Event. *Id* at 7. Because the University was consistent in its requirement and Dr. Nicholas himself shifted away from the academic consensus, the University was not coercive.

Second, Dr. Nicholas was not coerced into changing his privately held position outside his work with the Astrophysics Grant. This is in sharp contrast to *Agency for Int'l Dev*. and *FCC v. League of Women Voters of Cal*.. 468 U.S. 364 (1984). In *Agency for Int'l Dev*., the Court found coercion because organizations themselves had to hold an anti-prostitution policy; the restriction was not limited to work the groups with the federal funds or how funds were used. 570 U.S. at 210. They could not "avow the belief dictated by the Policy Requirement when spending Leadership Act funds, and then turn around and assert a contrary belief, or claim neutrality, when participating on its own time and dime." *Id* at 218.

Similarly, in *League of Women Voters*, the restriction in question denied public funding to any group that engaged in editorializing. 468 U.S. at 366. The Court found coercion because any organization that engaged in any level of editorializing could not receive any federal funding, regardless of how little public funding they received. *Id* at 400. These organizations were not even allowed to dissociate the federal funding from their editorializing activities; any group receiving funding was completely restricted from editorializing.

These cases are distinguished from the present case because there is no such restriction on the private views of Dr. Nicholas. He may hold whatever position he sees fit so long as he is not using government funds to do so. He does not need to vow against the Charged Universe Theory or his belief in the "lifeforce," he simply cannot promote these ideas using the Astrophysics Grant.

In conclusion, the condition in the Astrophysics Grant is not coercive because it does not force hypocrisy. At no point did Dr. Nicholas need to change his stance to maintain funding that he had previously relied on, nor did the University compel him to take a particular viewpoint outside the purview of the Grant.

4. Delmont University is not penalizing Dr. Nicholas for exercising his speech.

While the government may not impose a penalty, it can encourage an alternative activity. *Maher v. Roe*, 432 U.S. 464, 475 (1977). The Court in *McRae* points out that "[a] refusal to fund a protected activity, without more, cannot be equated with the imposition of a penalty." *Harris v. McRae*, 448 U.S. 297, 317 n19 (1980). Dr. Nicholas fails to show this something "more" required to rise to the level of a penalty. The removal of the Astrophysics Grant lacks any of the hallmarks of a penalty and is instead a mere refusal to fund an activity which is beyond the scope of its purpose.

The present case is easily distinguished from the scenario described in *Speiser v. Randall*, which illustrates how spending may be deemed a penalty. 357 U.S. 513 (1958). In *Speiser*, the government threatened to withhold a certain tax status from veterans unless they signed an oath that they did not advocate the overthrow of the government. *Id* at 515. The Court found this to be an unconstitutional penalty because there was no discernable reason for the requirement of the oath aside from penalizing those veterans with anti-government views. *Id* at 527.

The Court in *Speiser* suggested that public employees may be removed from their position when they present a danger of tarnishing government objectives. 357 U.S. at 528. This idea came to fruition in *Garner v. Board of Public Works of City of Los Angeles*, 341 U.S. 716 (1951). In *Garner*, the Court upheld a requirement that city workers disclose whether they held previous affiliation with the Communist Party. *Id* at 719. The Court reasoned that "[w]hether legislative action curtailing a privilege previously enjoyed amounts to punishment depends upon the 'circumstances attending and the causes of the deprivation.'" *Id* at 722 (citing *Cummings v. State of Missouri*, 4 Wall. 277, 320 (1867)). This line of cases shows that determining whether a condition is a penalty requires consideration of the context.

As one receiving public funds to promote a government objective, Dr. Nicholas is in a special position to sway the public away from the desired objective of the Astrophysics Grant. The purpose of the Grant is to study the Pixelian Event and promote public understanding of a scientific issue. Seawall Aff. 6. Unlike the oath requirement in *Speiser*, there is a reason for removing funding from Dr. Nicholas; he is using the Astrophysics Grant in a way that tarnishes the very goal that it was designed to accomplish. By promoting his religious ideas directly counter to the Grant's goal of reducing public confusion, the University is within its rights to remove him from this position.

B. ***Dr. Nicholas' free speech is not being infringed upon because he is not acting as a private speaker, but rather as a public speaker for Delmont University.***

Dr. Nicholas was selected by Delmont University not to speak as a private individual, but to promote the government goals associated with the Astrophysics Grant. Once Dr. Nicholas put these government goals in jeopardy, the University was within its rights to take action. Appropriate action in this case was to revoke the funding and privileges associated with the Grant.

1. Dr. Nicholas is a government speaker and is denied public funds.

The Astrophysics Grant was not designed to facilitate private speech. The purpose of the Grant was to promote the GeoPlanus to promote a scientific academic understanding. Seawall Aff. ¶6. The University selected Dr. Nicholas because he was highly qualified to promote this view on the University's behalf; it did not select him to push his own fringe conclusions about the Pixelian Event.

The distinction between facilitation of private speech and the use of a government speaker is discussed in *Rosenberger v. Rector and Visitors of University of Virginia.* 515 U.S. 819 (1995). In *Rosenberger*, the University of Virginia refused to fund a group's printing fees of a certain flyer because it deemed the flyer "religious speech." *Id* at 827. The Court found that this was impermissible discrimination based on the content of speech because the student groups were independent from the university. *Id* at 819. However, the court specifically distinguished this from other cases such as *Rust*, 500 U.S. 173, where the government uses government funds to promote a governmental message; in such cases, the government may "take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Id* at 833.

This is precisely the situation that the University finds itself in. It did not establish the Astrophysics Grant to promote Dr. Nicholas' private speech; rather, they established the Grant to

represent the University in promoting their goal of studying the Pixelian Event through the further an academic consensus of scientific study untainted by religious persuasions. Seawall Aff. ¶ 6. This is evidenced by the fact that the final findings and conclusions would be published by their own University of Delmont Press. R. at 5. The University selected Dr. Nicholas because he was best qualified to represent the University, not to promote his private ideology.

With this clear vision for the Astrophysics Grant in mind, the University was within its rights to "take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted by the grantee." *Rosenberger,* 515 U.S. at 833. By letting his religious views and aspirations so potently influence his research and findings, the University's message was in jeopardy of being distorted at the least and completely hijacked at the most. Therefore, the University was allowed to take steps to protect its message, and as discussed below, denying funds from Dr. Nicholas was the appropriate recourse.

2. *Declining Dr. Nicholas funds was the appropriate recourse.*

Dr. Nicholas is not entitled to receive the Astrophysics Grant merely for exercising his free speech. As discussed above, he is not being denied his capacity to speak outside the scope of the Astrophysics Grant. In the absence of any sort of penalization for his speech, the appropriate recourse for Delmont is to remove funding if Dr. Nicholas continues using the Grant to promote his own views. In other words, Dr. Nicholas has the choice of receiving the funding under the condition in the Astrophysics Grant or acting outside its limitations and foregoing the funding.

Removal of funding is inappropriate in cases like *Speiser*, where the government was penalizing veterans for exercising free speech. *Speiser v. Randall.* 357 U.S. 513, 515 (1958). Conversely, the government is not compelled to fund individuals for exercising speech. The distinction is drawn in *Regan v. Taxation with Representation of Washington*. 461 U.S. 540 (1983). The government had denied funding from a group that engaged in lobbying, and the

group claimed that its rights were infringed upon because it engaged in lobbying. The Court pointed out that the group was not denied a benefit because it chose to lobby, but rather "Congress ha[d] merely refused to pay for the lobbying out of public monies." *Id* at 545. Similarly, the University has not denied Dr. Nicholas the ability to speak on his views; it has merely declined to pay him for promoting those views with public monies. Therefore, denying funding to Dr. Nicholas when he is using the monies for something outside the scope of the Grant is the proper recourse.

II. The State of Delmont and Delmont University have neither impacted Dr. Nicholas' right to Free Exercise, nor the Establishment Clause by ceasing the administration of the Grant.

The question presented regarding the Establishment Clause issue is in two distinct parts. First, whether a state funded research study violates the Establishment Clause, if the outcome of that research supports further investigation into the religious symbolism ascribed to by members of the Meso-Pagan faith. Second, whether the interest of the investigator to use such research to promote his ability to become a sage within the Meso-Pagan religion would cause the state to run afoul of anti-establishment principles of the First Amendment. The State of Delmont and Delmont University are not concerned with the personal religious convictions of Dr. Nicholas. What the State and the University are concerned with however, are the religious conclusions from Dr. Nicholas' research and the implications they may have on the University itself. Dr. Nicholas has shown an intention, although not set in stone, of using the conclusions from his research to promote his application into religious leadership. R. at 9.

While the trial court attempts to make a distinction between the facts of the current matter and other cases where an establishment issue has come into play, the trial court had erred in the application as evidenced clearly in the appellate court's decision. Regarding the Court's jurisprudence, the lower court does not address the fact that *Locke* continues to be good law and

shows great similarity to the facts and circumstances presented here. Additionally, the trial court's decision hinges on attempting to distinguish the current matter from *Locke* by using cases which are not applicable to the current matter. This Court should affirm the Fifteenth Circuit decision, recognizing the prohibition against state sponsored clergy, and in line with this Court's current and past Establishment Clause jurisprudence as it relates to the promotion of religious devotional education as established by the *Locke* court.

A. Locke is controlling and shares a significant overlap to the facts at hand.

The Establishment Clause of the First Amendment of the Constitution states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" U.S. CONST. amend. I. The establishment issue presented before this Court addresses one of the outer limits of the Establishment Clause. Specifically, long time issue of state sponsored clerical education. *See Everson v. Bd. Of Educ.*, 330 U.S. 1, 68 (1947)(Appendix of Rutledge, J. dissent). The State of Delmont and Delmont University created grant funds on the condition that conclusions drawn from any research conducted be scientific in nature and aligned with the academy's standards for publication. R. at 5. The state has not evidenced any animus towards the religion of Dr. Nicholas, only apprehension the provision of public funds for this type of use. More specifically, providing public funds towards research where certain conclusions drawn may be interpreted to be a promotion of certain religious views, not aligned with academic standards. *Id*. Additionally, when these conclusions are then intended to be used by the researcher to promote their application into religious leadership, the state has an interest in determining if this use of funds is a proxy support of clerical education.

1. *The intent to pursue a position in religious leadership, as highlighted in Locke, is the same intent as indicated by Dr. Nicholas and may result in the indirect promotion of clergy.*

When public funds are provided to an individual, the state may condition those funds on certain criteria, including that they may not be used in the promotion of clerical education. *Locke v. Davey*, 540 U.S. 712, 725 (2004). Here, as evidenced by the Dr. Nicholas' purpose for entering the field, conclusions drawn from his research, and personal statements indicating a pursuit of religious leadership, the intent of the petitioner to use public funds to become a sage would certainly cause the state to run afoul of Establishment Clause precedent. For this reason, the State of Delmont has a significant establishment interest in denying public funds to the petitioner when those funds are to be used in a manner which would constitute a state sponsorship of clergy.

The Court in *Locke v. Davey* addressed a similar issue to the current matter. Specifically, the question of to what extent may the government support religious institutions and programs of study if those programs would be later used to promote an individual's ability to join the clergy. *Id* at 717. In *Locke*, the Court discussed if the denial of state sponsored scholarships based on the state's anti-establishment concerns were of a "compelling interest" in light of Free Exercise. *Id* at 718. These conditions were set in place by the state of Washington to prevent the use of public funds to promote religious belief. *Id* at 716. When the Court decided that the scholarship condition did not display any animus towards specific religions, the Court held that when states fund "…what is essentially a religious endeavor" states may run afoul of anti-establishment provisions. *Id* at 721. Because of this, the state of Washington in *Locke* had an establishment interest in setting conditions against the use of scholarship towards devotional degrees. *Id* at 725. Additionally, there would not be an issue of free exercise as the scholarship does not condition the individual's ability to practice in certain religions or participate in public life. *Locke*, 540 U.S. at 720.

Similar to *Locke*, the current matter concerns administration of public funds conditioned on the non-use directed towards religious leadership. R. at 11. Those funds were then denied to individuals who intend to pursue a future in religious leadership. *Id*. In *Locke*, Davey's' purpose

was to pursue an education in devotional theology where he later planned to pursue a future in religious leadership. *Locke*, 540 U.S. at 717. Likewise, Dr. Nicholas has displayed both a prior and current desire to join religious leadership within the Meso-Pagan faith. R. at 9; Nicholas Aff. ¶ 13-15. Because Dr. Nicholas has shown an intent to use his published work sponsored by state tax dollars in order to promote a future clerical endeavor, just as a similar intent was displayed in *Locke*, the state risks running afoul of anti-establishment principles. Additionally, the State and the University only wish to limit the use of the grant for the purpose of applying for religious leadership. R. at 11.

2. The State and the University are merely choosing to fund certain types of academic research, not restricting access to funds only to secular individuals.

Part of the analysis in *Locke* hinges on what specific actions the State is preventing. The Court indicates that like the state of Washington is simply choosing not to fund a category of instruction. *Locke*, 540 U.S. at 721. Here, the state of Delmont only wishes to not fund a category of research which has been conducted by this University and others. Seawall Aff. ¶ 9. The type of research the state wishes to prevent from being published is of the type that has caused complications in the past and will continue to cause complications if not limited to acceptable standards. *Id*. The facts in *Locke* share a striking resemblance to those before the Court, further evidencing its relevance and applicability in the current matter. Therefore, in alignment with this Courts jurisprudence, the Court should uphold the Fifteenth Circuit decision which properly considered the applicability of *Locke* under these facts and circumstances.

B. While the decisions in Carson, Espinoza, and Trinity Lutheran show the limits of State funding, their standards are not applicable.

In the original proceedings, the District court considered the application of Locke to these facts. There, the court did not find Locke being an applicable standard stating, "... cabin Locke in such a way to make it obsolete in this case." R. at 28. The lower court identified that Locke was not applicable when compared to the later decisions in *Espinoza*, *Carson*, and *Trinity Lutheran*.

While the District court argues that these later establishment clause cases regarding state funding of "religious endeavors" has outmoded Locke, these cases highlight different aspects of the state support of clergy not specifically addressed in *Locke*. *Locke*, 540 U.S. at 721. While *Locke* creates the benchmark with regards to state support of clergy, the aforementioned cases used by the trial court display the limits of this support. Specifically, when a potential to become a member of clergy becomes too attenuated. The standard set in the *Locke* court is still relevant and applicable to cases addressing the question of if the state's provision of public funds amounts to a state support of clergy. While the cases of *Espinoza*, *Carson*, and *Trinity Lutheran* create new jurisprudence to fill in the gaps and define the outer limits of state support of clergy, their standards do not render *Locke* inapplicable.

1. *The level of attenuation described in Espinoza to outweigh protentional establishment concerns is not present under the Locke standard, nor the current matter.*

In their opinion, the trial court held *Locke* to be inapplicable to the current matter as a result of later jurisprudence. R. at 28. One of the cases specifically utilized by the trial court is the case of *Espinoza v. Montana Department of Revenue*. R. at 26. *Espinoza* discussed the granting of tax credits to families in order to ease the burden of sending children to school on the condition of sending those children to secular schools. *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2251 (2020). The question the Court there addressed is determining if this condition was a violation of free exercise. *Id*. The court makes it clear that deprivation of a public benefit based solely on "religious character" would be violative of free exercise, and the use of the establishment clause to enforce the action is violative. *Id* at 2255. The Court held that under the facts and circumstances presented, the use of tax dollars to send children to school may not be conditioned on that school being secular. *Id* at 2278. Additionally, the Court in *Espinoza* indicates that the concern of promoting individuals to become members of religious leadership is too attenuated and broad under these circumstances. *Id* at 2261.

While *Espinoza* addresses relevant points which may overlap with the current matter, the facts presented to this Court share a much greater relationship to the facts and circumstances in *Locke*. *Espinoza* addresses the state provision of public funds in the context of offering tax credits to families to extend benefits which act like a scholarship. *Id* at 2251. Similarly, *Locke* also discusses state funding of scholarships to ease the burden of college costs. *Locke*, 540 U.S. at 715. The key difference between the arguments in these two cases is attenuation. The *Espinoza* court emphasizes that government programs have been historically upheld when a benefit to religion is attenuated by private choices. *Espinoza,*140 S. Ct. at 2261. In Locke, there is a similar type of private choices made by Davey as those made by the families in *Espinoza*. The key difference displayed by these decisions is where the private action becomes too attenuated as to implicate state establishment concerns. In *Espinoza's* case, private actions made on behalf of school children with no clear intent to join the clergy would suffice as attenuated. *Id*. In Locke, by contrast, the present intent of Davey to pursue religious leadership supports attenuation that would not be so great as to eliminate Establishment concerns. *Locke*, 540 U.S. at 717. In application to the current matter, Dr. Nicholas has displayed a present intent similar to Davey in *Locke*. See Nicholas Aff. ¶ 57. Dr. Nicholas has evidenced through his actions, testimony, and social media posts this present intent and by utilizing public funds, has implicated similar Establishment concerns as in Locke which are stark contrast to any intent displayed in *Espinoza*. *See* Nicholas Aff. ¶ 57; *Espinoza*, 140 S. Ct. at 2250. ("... but no comparable tradition supports Montana's decision to disqualify religious schools from government aid.)(Contrasting against history and traditions presented in *Locke.*). Although Dr. Nicholas' actions have been somewhat attenuated by private choice, the attenuation seen here is not so great as to eliminate establishment clause concerns as they were in *Espinoza*.

2. *The types of public benefits discussed in Carson, Espinoza, and Trinity Lutheran do not bear resemblance in function or application to the Grant at issue.*

It is also argued that the use of public funds that benefit religious schools is barred by the Establishment Clause. The Court has emphasized that Establishment provisions are not impacted when non-secular people and institutions benefit from neutral government programs. *Espinoza*, 540 U.S. at 2254. The types of government programs highlighted in *Espinoza*, *Carson*, and *Trinity* are stark in their differences when compared to the Grant in question here. In the aforementioned cases, the State attempts to provide these public funds in order to promote some public benefit. Public education as in *Carson* and *Espinoza*, and playground equipment as in *Trinity*. *See Carson v. Makin*, 142 S. Ct. 1987, 1993 (2022); *Espinoza,* 140 S. Ct. at 2251; *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 453 (2017). By contrast, the current matter disputes the granting of tax dollars to those who wish to conduct academic research. R. at 5. The District court implies therein, by drawing a comparison between these types of programs, that the removal of the Grant being used to support the initiation of clergy is a deprivation of public benefit on the same level as the deprivation of a public education or recreational equipment. R. at 28. Research grants of this type are those where applicants even eligible for the grant have achieved great levels of higher education, conducting large amounts of previous research, and applying not on the basis of need or by virtue of citizenship, but on the basis of merit, value, and ability. R. at 5. Although paid for by public funds, this Grant program here could not be further from the types of tax credits seen in cases such as *Espinoza*, *Carson, and Trinity*.

CONCLUSION

Dr. Nicholas' rights have not been infringed upon in any way. The only limit on his speech imposed by Delmont University is a restriction on how public monies are spent, and whether or not Dr. Nicholas may use the public monies to muddle a legitimate government objective. Furthermore, the State must enforce the protections of anti-establishment doctrine for

the benefit of all people. By ceasing the expenditure of public funds for the use of an individual to become a member of religious clergy, the State ensures that the wall between church and state is maintained. This Court should find that this is impermissible and that the University appropriately revoked funding, and affirm the decision of the Court of Appeals for the Fifteenth Circuit.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule IV(C)(3) of the Official Competition Rules of the Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Respondent, certify that:

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

/s/ Team 18
Counsel for Respondent