No. 23-CV-1981

In the
Supreme Court of the United States

COOPER NICHOLAS
Petitioner,

v.

STATE OF DELMONT and
DELMONT UNIVERSITY
Respondent.

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

BRIEF FOR PETITIONER

Team 19
Counsel for the Petitioner

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STATEMENT OF JURISDICTION

The Petitioner, Dr. Cooper Nicholas appeals the opinion and order of the Court of Appeals for the Fifteenth Circuit reversing the grant of summary judgment in favor of Petitioner by the District Court for the District of Delmont, Mountainside Division. The judgment of the Court of Appeals was entered on March 7, 2024. The petition for a Writ of Certiorari was filed on March 11, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1554(1).

QUESTIONS PRESENTED

1. May a state university, conformably to the constitution, require that a grant recipient conform his conclusions to the academy's consensus view of what is scientific?

2. Does a state-funded research study violate the Establishment Clause when its principal investigator makes findings that happen to accord with the Meso-Pagan religion, and is the Establishment Clause violated when the principal investigator considers using that research to obtain clerical status?

STATEMENT OF FACTS

In the fall of 2021, renowned astrophysicist Dr. Cooper Nicholas took a leave of absence from his residency at The Ptolemy Foundation to return to his home state of Delmont, where he had been invited to fill a highly sought-after academic position—The "Visitorship in Astrophysics"—created by the state university system. (R. at 3-5; Seawall Aff. ¶8). Delmont University earlier that spring had determined to offer a research grant to fund research on the centennial appearance of the "Pixelian Comet" in the Northern Hemisphere. (R. at 5). The grant provided for all necessary resources for a visiting scholar to perform a study of the comet's appearance and to publish the results of the study between March 2022 and March 2024 through Delmont University Press. (R. at 5). The grant required "that the study of the event and the

derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study." (R. at 5). The position was highly coveted, with the University receiving "an overwhelming number of applications" for the position after publicizing it in the spring. (R. at 5, 33; Seawall App. ¶8). Dr. Nicholas's application "stood out," to the University, due to his "eminence in the field and his 'reputation as a wunderkind' with 'intuitive, often ground-shifting observations,'" and the University awarded him the Astrophysics Grant in the fall of 2020. (R. at 5; Seawall Aff. ¶8).

In the months before the Pixelian Event, Dr. Nicholas developed and conducted "a variety of widely accepted parameters" for his measurements, which he then published in *Ad Astra*, a top-tier academic journal in the field of Astrophysics. (R. at 6). The article detailed the findings of his astrological observations and concluded that they demonstrated "something momentous was occurring in the galaxy prior to the Pixelian Event." (R. at 6). Dr. Nicholas's initial findings were widely discussed at academic conferences and in various papers authored by top scientists. (R. at 6). The Pixelian Event then occurred in the Northern Hemisphere over a period of three weeks in the Spring of 2023. (R. at 3). Six months later, Dr. Nicholas, having conducted his observations and collected data on the Pixelian comet, once again brought his findings to *Ad Astra* for publication. (R. at 6). His article, which appeared in the Fall of 2023, relayed the standard data derived from the comet's travel" which included "the phenomena associated with meteor showers and the changes in the comet that had occurred since its last recorded appearance nearly a century before." (R. at 6-7).

The article concluded that the phenomena observed during the comet's appearance were consistent with a school of scientific thought known as the "Charged Universe Theory," a view that contends "that cosmological phenomena throughout the universe are dependent on charged

particles, rather than gravity." (R. at 7). At the time of publication, Dr. Nicholas had not yet disclosed his adherence to the Charged Universe Theory to the academic community. (R. at 7). Dr. Nicholas felt that his conclusions were bolstered by Meso-American hieroglyphs, which he interprets as "primitive depictions of the same celestial array that had just occurred in the Northern Hemisphere" during the Pixelian Event. (R. at 7-9). While Dr. Nicholas's article received significant criticism from the scientific community in the United States, a number of Astrophysicists from Meso-America, Australia, and Europe responded positively to Dr. Nicholas's findings, expressing excitement about the potential ramifications of his research. (R. at 9). However, they stated that further study would be necessary to know for certain. (R. at 9).

However, in a letter dated January 3, 2024, Delmont University President Meriam Seawall wrote to express the University's concerns with Dr. Nicholas's findings. (R. at 9). Her concerns echoed those of Dr. Elizabeth Ashmore, founder of *Ad Astra*, who had earlier expressed her concerns to Dr. Nicholas "that information found in the archeological and Meso-Pagan foundational texts were religious in nature, not empirical." (R. at 8). Dr. Ashmore had written a preface to Dr. Nicholas's article in which she described Dr. Nicholas's findings as "cutting edge, paradigm-shifting discoveries in the field of astrophysics" but also cautioned that Dr. Nicholas's conclusions "could be seen as coming perilously close to the kind of quantum leaps and unsupported analogies of the early alchemists." (R at 8). President Seawall's letter quoted this language with disapproval and wrote that "[c]ontinued funding of the grant" including the University observatory and state-of-the-art astrological equipment, was "dependent on [Dr. Nicholas'] agreement to limit [his] research experiments and conclusions to those comporting with the language of the state's grant" which stated that '"the study of the event and the

derivation of subsequent conclusions" must "conform to the academic community's consensus view of a scientific study." (R. at 10).

Dr. Nicholas has adopted and is an adherent of the Meso-Paganist Faith. (R. at 4; Nicholas Aff. ¶ 6). During the controversy that led to this case, the University discovered via social media that Meso-Pagan Sages had encouraged Dr. Nicholas to use his completed study on the Pixelian event "as a possible foundation for an application to become a Sage." (Seawall Aff. ¶ 10; Nicholas Aff. ¶14). Such a study is required in the Meso-Paganist faith as a qualification to become a cleric. (Nicholas Aff. ¶ 4). Dr. Nicholas has maintained that he is "open to whatever findings" result from his study "regardless of their religious implications." (R. at 8-9). He has strongly resisted the suggestion that his conclusions are "unscientific" and has maintained that his focus has been on "studying the Pixelian event from a scientific perspective." (R. at 8).

In a January 5, email, Dr. Nicholas "responded with vigor" to what he perceived as the University's attempt to dictate to him "what to conclude or upon what his observations might rest." (R. at 10-11). His strong response was born out of the belief that the attempt to "censor his research and its consequent conclusions, wherever they might lead" was contrary to "everything upon which and for which science stood." (R. at 10-11). After speaking with colleagues, Dr. Nicholas confirmed the University has previously allowed other members of its science faculty to "rely on and reference . . . the writings of other pagans, such as the Greeks, Romans, Incas, and Phoenicians" in their writings. (R. at 10; Nicholas Aff. ¶ 18).

President Seawall gave Dr. Nicholas an ultimatum on behalf of the University to come into compliance with the terms of the grant or lose access to the resources provided by it. (R. At 11). When Dr. Nicholas continued to advocate for his position by way of email, the University revoked his access to the University Observatory and terminated his grant. (R. at 11; Nicholas

Aff. ¶17). They then issued a statement that was circulated by the national media stating that their action was taken (1) "because of a fundamental disagreement with Dr. Nicholas over the meaning of science itself" and (2) to prevent confusion of science with religion. (R. At 11). As Dr. Nicholas later stated, he had been "effectively fired." (Nicholas Aff. ¶17).

Dr. Nicholas then initiated this litigation in response and asked the District Court to grant injunctive relief requiring the state to reinstate him under the Astrophysics Grant, alleging that Appellants placed an unconstitutional condition on his speech in violation of the First Amendment. (R. At 12). Appellants responded that they have not infringed Appellee's First Amendment rights and further stated that "continuing to support Plaintiff's work would be a violation of the First Amendment's Establishment Clause." (R. At 12). Both parties filed motions for summary judgment, and the District Court granted judgment for Dr. Nicholas on February 20, 2024. (R. At 12, 30). On March 7, 2024, the Circuit Court reversed the District Court's grant of summary judgment in favor of Dr. Nicholas and granted summary Judgment in favor of the State of Delmont and the University. (R. At 51).

SUMMARY OF THE ARGUMENT

The University's restriction on Dr. Nicholas's speech is unconstitutional because they created a forum for scientific study and engaged in viewpoint discrimination. Alternatively, the University's restriction is outside the scope of the program as it restricts Dr. Nicholas's speech. The Establishment Clause is not violated when public funding is used for religious purposes. Further, the Establishment Clause is not violated when an individual uses public money to subsequently obtain clerical status.

ARGUMENT

I. RULE 56 STANDARD

The issues here are decided through Rule 56(a) in the Federal Rules of Civil Procedure. Rule 56(a) states, "The court may grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "There is no issue for trial unless there is sufficient evidence favoring the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 249 (1986). It is the judge's function to determine "if there is a genuine issue for trial." *Id.* "By its very terms, the standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine dispute of material fact." *Id.*, at 247. When there is absence of evidence in support of the nonmoving party, the burden on the moving party is discharged. *Celotex Corp. v. Catrett,* 477 U.S. 317, 327 (1986). No genuine issue of material fact can exist to grant summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Here, all findings would support that the Defendant made a unilateral mistake. Thus, the Defendant is entitled to summary judgment as a matter of law.

II. THE UNIVERSITY VIOLATED DR. NICHOLAS'S FIRST AMENDMENT RIGHTS BECAUSE IT DISCRIMINATED AGAINST HIS VIEWPOINT.

The basic principle of the First Amendment prohibits the government from telling people what they must say. *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc*., 570 U.S. 205, 213 (2013). Namely, each person should be able to choose for himself what ideas and beliefs are deserving of expression. *Id*. (citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994). Moreover, the government cannot compel the endorsement of ideas it approves of. *Knox*

v. Service Employees, 567 U.S. 298, 309 (2012). When the government creates a limited forum for speech, certain restrictions may be necessary to define the limits and purposes of the program. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 543 (2001).

A. The University's Restriction Is Unconstitutional Because It Created a Forum and The Restriction Discriminated Against Dr. Nicholas's Viewpoint.

The government, "may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum . . . nor may it discriminate against speech on the basis of its viewpoint". *Id*. at 829 (citing *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 804-806 (1985); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 392-393 (1993)). Additionally, there is a distinction between "content discrimination, which may be permissible if it preserves the purposes of that limited forum, and, on the other hand, viewpoint discrimination, which is presumed impermissible when directed against speech otherwise within the forum's limitations." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 830 (1995). If the discrimination is based on content, then the restriction must be 1. Narrowly tailored and 2. Further a substantial governmental interest." *R. A. V. v. St. Paul*, 505 U.S. 377, 405 (1992).

In *Rosenberger*, a university sought to refuse to give funding to the university-approved, independent student organization Wide Awake Productions ("WAP"), on the basis that they published religious articles. *Rosenberger*, 515 U.S. at 827. The Court held that this violated the First Amendment because the university created a public forum and engaged in viewpoint discrimination. Namely, the Court reasoned that since this was a university-approved organization and approved category of publication, the school was denying funding not because of subject matter, but because of perspective. *Id*. at 831. Moreover, the university was not

subsidizing private speakers to transmit its own message but was, "expending funds to encourage a diversity of views from private speakers." *Id*. at 834. The Court also noted that the school's policy was overly inconclusive and could be read to exclude numerous notable historical writers like Plato and Descartes. *Id*. at 836-837. Therefore, the university had created a limited public forum and could not engage in viewpoint discrimination because the students were not university agents, were not controlled by the university, and the university was not responsible for the speech. *Id*. at 835.

In *FCC,* Congress passed the Public Broadcasting Act which allowed for federal funds to be given to non-commercial television and radio stations to engage in educational programming on condition that they do not engage in editorializing. *FCC v. League of Women Voters*, 468 U.S. 364, 366 (1984). Congress enacted the Act to create a public forum for private speakers to engage in the discussion of diverse viewpoints free from governmental control. *Id*. at 394. The Court held that this condition was unconstitutional because it placed a condition upon recipients of the grant and not upon the program itself. *Id*. at 367. Moreover, the government was placing a content-based restriction upon the speech of the non-commercial stations preventing them from engaging in all forms of editorializing. *Id*. at 380. Additionally, the court held that engaging in editorializing and providing opinion lies at the heart of the First Amendment. *Id*. at 381. Furthermore, Congress not only provided funding to other similar stations and did not require an editorial ban, but also a simple disclaimer would have served the same government interest. *Id*. at 394. Therefore, this was an unconstitutional content based restriction that did not further a substantial state interest and was not narrowly tailored.

Similar to *Rosenberger*, the University is engaging in viewpoint discrimination as it created a forum and is punishing Dr. Nicholas because of his viewpoint. Firstly, the University

did not place any restrictions on Dr. Nicholas's speech other than that it had to conform to the consensus view of scientific study. (R. at 5). Secondly, the University was not responsible for Dr. Nicholas's speech, and he was not an agent of the University. Namely, when the University wrote its letter to Dr. Nicholas it stated they did not want to gamble with its reputation and that his conclusions did not conform to the academic consensus view of scientific study. (R. at 10). The University never stated that they were responsible for his speech or that he was not allowed to conclude how he wanted so long as it was scientific. Moreover, Dr. Nicholas was not engaging in speech that had nothing to do with science, rather he was opining that his discovery supported the Charged Universe Theory. Numerous foreign scholars also saw this and said that Dr. Nicholas could be on to something big, but only further study could tell. (R. at 9). Thus, when the University restricted Dr. Nicholas's speech it was engaging in viewpoint discrimination because it was punishing him not because of the type of speech that he engaged in, but because of the particular perspective he took. Namely, the University did not like the Charged Universe Theory, and although the academic community's view was that the Charged Universe Theory was not correct that does not mean that the study of it was somehow unscientific. The University by creating this Visitorship, formed a limited forum of public discourse regarding science. Now the University cannot turn around and limit the discourse regarding science just because it does not like the particular perspective that is spoken. Therefore, the University engaged in viewpoint discrimination and that restriction is presumptively unconstitutional.

Alternatively, similar to *FCC*, the University engaged in content based discrimination when it restricted Dr. Nicholas's discussion of the Charged Universe Theory. Firstly, the grant was created for scientific study, not the publication of the University's own ideas. Namely, the University allowed Dr. Nicholas to conclude however he wanted and to express his own ideas so

long as it conformed with scientific study. (R. at 5). Moreover, scientific study is assumed to be private in nature and free from governmental control, and a university is traditionally an area that fosters a wide range of ideas. *See Legal Servs. Corp. v. Velazquez,* 531 U.S. 533, 537 (2001) (assumption that attorneys are free from governmental control); *Bd. of Regents v. Southworth*, 529 U.S. 217, 231(2000) (universities have a duty to facilitate a wide range of speech). Namely, if this Court holds that Dr. Nicholas's use of the historical Meso-Amercian depictions was not scientific, the University still engaged in content based discrimination. Similar to FCC, the University restricted Dr. Nicholas from giving his opinion on the research. Moreover, like *FCC,* the University suppressed the content of Dr. Nicholas's speech and this restriction did not serve a substantial state interest, nor was it narrowly tailored. Namely, the University restricted the recipient of the grant Dr. Nicholas, from giving his opinion on his research, which strikes at the heart of the First Amendment. *FCC*, 468 U.S. at 381 (giving one's opinion lies at the heart of the First Amendment). Moreover, similar to *FCC*, the government's interest of the public confusing religion and science is merely theoretical and not substantial enough to justify a restriction of speech. (R. at 11). Additionally, even if the government interest was substantial, the restriction is not to be narrowly tailored. Namely, the University could use a disclaimer to ensure that the public does not confuse Dr. Nicholas's opinion with fact or the opinion of the University itself. Moreover, like *FCC,* the University allowed numerous other professors in the school to engage in the same type of speech that Dr. Nicholas engaged in. (R. at 10). This not only undermines the University's interest in the public's confusion between religion and science but also points to the fact that the University could have used narrower means to address the same interest. Moreover, the University's restriction would also be underinclusive as Dr. Nicholas could publish his opinion about the Charged Universe Theory on his own time. Therefore, the

University's restriction of Dr. Nicholas's speech is unconstitutional because the restriction does not further a substantial government interest and is not narrowly tailored.

Conversely, the respondents may argue that this case is similar to *Regan*, where a nonprofit sued the IRS claiming that its 501(c)(3) bar against lobbying was an unconstitutional restriction on free speech. *Regan v. Taxation with Representation,* 461 U.S. 540, 541-542 (1983). The Court held that Congress does not have to somehow grant a benefit to someone for them to exercise their First Amendment rights. *Id*. at 545. However, in this case, the University chose to fund a scientific study and then restricted the recipient of that study. *See R.A.V. v. St. Paul*, 505 U.S. 377, 393 (1992) (First Amendment implications cannot be easily avoided). Here, the restriction says that his conclusions must conform with the academic community's consensus view, therefore, this is not a program restriction, but a restriction that only affects the recipient's speech. The University is therefore attempting to produce a result that it could not command directly. *Speiser v. Randal,* 357 U.S. 513, 526 (1958). Namely, the University is not allowed to command a particular scientific conclusion. Rather the University is only allowed to fund a scientific study and require that it is used to discuss certain topics, but it cannot require certain conclusions to be drawn. *see Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995) (The state can create limited forums and reserve it for certain groups or certain topics). Now, the respondent will argue that Dr. Nicholas was engaged in religious speech and therefore they are constitutionally allowed to restrict that. However, just as the District Court noted there is no clear line between science and religion, namely both share numerous conclusions and facts. (R. at 24). Moreover, Dr. Nicholas's use of the Meso-Amercian depictions is a historical fact of ancient peoples' depictions and understanding of the universe which is scientific. Finally, just because a religion might believe in the Charged Universe

Theory does not somehow make it unscientific. Although, the academic community does not adhere to the Charged Universe Theory does not make the theory unscientific, rather it is a theory that before Dr. Nicholas's discovery did not have as much evidence to support it. Therefore, the University placed an unconstitutional restriction on Dr. Nicholas's speech by not allowing him to express his scientific opinion.

The University's restriction on Dr. Nicholas's opinion violated the First Amendment because the University created a forum and engaged in unconstitutional speech discrimination.

B. The University's Restriction Is Unconstitutional Because It Restricted the Recipient of The Program, Dr. Nicholas, and Not the Program Itself.

Generally, the government is allowed to make conditions upon the receipt of federal funding and if the recipient has a problem with said condition their recourse would be to refuse the funding. *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc*., 570 U.S. 205, 214 (2013). Moreover, this remains true even when the objection to the condition may affect a recipient's free speech rights. *Id*. However, "the Government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.'" *Id* (quoting *Forum for Academic and Institutional Rights*, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006)). Additionally, a line has been drawn to distinguish between "conditions that define the limits of the government spending program—those that specify the activities Congress wants to subsidize—and conditions that seek to leverage funding to regulate speech outside the contours of the program itself." *Id*. at 215.

Namely, in *Agency* Congress passed the Leadership Act to combat the spread of HIV/AIDS around the world. *Id.* at 208. The condition at issue in this case required that all non-governmental organizations that received federal funds through this Act must have a policy expressly opposing prostitution and sex trafficking. *Id*. at 210. Here the Court held that this

condition was unconstitutional because it sought to leverage federal funding to regulate speech that was outside the scope of the program. *Id*. at 217. The Court reasoned that the condition sought to compel grant recipients to adopt a particular belief to receive funding. *Id*. at 218. Moreover, this was more than just a condition for selecting recipients but was an ongoing condition that could be grounds for terminating the grant. *Id*. Therefore, the condition was unconstitutional because it forced a condition upon the recipient of a subsidy rather than on a particular program and would have forced recipients to assert contrary or neutral beliefs while on their own time or dime. *Id*. at 219.

Moreover, in *Velasquez* Congress passed the Legal Services Corporation Act, and as a condition of receiving federal funding under the act prohibited the attorneys from attempting to amend or otherwise challenge existing welfare laws. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 537 (2001). The Court held that this condition was unconstitutional because an attorney was not a government speaker, but rather someone who was speaking on behalf of his client. *Id*. at 542. Moreover, there is an assumption that counsel will be free from governmental control. *Id*. Therefore, the condition was unconstitutional because of the private nature of the speech and the attempt of the government to control this medium of expression without any real alternative for the indigent clients. *Id*. at 543.

Similar to *Agency*, where the condition that sought to compel belief was held to be unconstitutional because it was outside the scope of the program. Namely, the restriction of Dr. Nicholas's speech was unconstitutional because the restriction fell outside the scope of the program. As in *Agency*, the condition is not for selecting candidates, but a continuing condition that can be used to terminate the grant and was placed the recipient Dr. Nicholas. Moreover, Delmont University is seeking to force Dr. Nicholas to expressly and publicly adopt their

particular view of science. Now the University will argue that science is not a belief, but an objective field of academics, and they are simply requiring Dr. Nicholas to confirm his findings to the academic community's consensus view. However, the University is seeking more than that because Dr. Nicholas's article is scientific. Namely, he wrote about his findings and then went into how those findings impact the scientific community's understanding of the Charged Universe Theory and added historical context from the Meso-American indigenous tribes to support his findings. (R. at 6). Moreover, science changes and evolves based on new observations and discoveries. Just because the Charged Universe Theory before Dr. Nicholas's discovery had little support from the scientific community does not matter because he has found new evidence that can support this theory. As scholars from around the world said Dr. Nicholas might be on to something big but would need long and substantial further studies. (R. at 9). Thus, the University's condition for following the academic community's view of science is not seeking wide open channels of discourse to find the objective truth, but rather the University is seeking to control speech to only allow for political truth. *FCC*, 468 U.S. at 384 (A regulation motivated by a desire to curtail expression of a particular point of view is an example of a law abridging the freedom of speech). Therefore, this condition should be treated similarly to the condition in *Agency* and be ruled unconstitutional.

Similar to *Velasquez,* Dr. Nicholas is not a public speaker or someone who is speaking on behalf of the University. The University awarded Dr. Nicholas a grant to study the Pixelian event and to publish his findings. (R. at 5). Namely, he was not awarded the grant to speak on behalf of the University, but on his own behalf. Moreover, similar to *Velasquez* scientists are like attorneys in that they are assumed to be free from government control. Namely, when people listen to a scientist they are assuming that what the scientist is saying is his unbridled

opinion based on his findings and not something that was controlled by the government. By the University restricting Dr. Nicholas's speech they are attempting to restrict speech that is not only private by nature, but also a medium of expression that is assumed to be free from control. Namely, scientific research is not only a traditionally private form of speech but also an area of speech that people assume is free from government control. Moreover, a university is considered a place of public discourse and should encourage the free exchange of ideas and ensure academic freedom. *See Bd. of Regents v. Southworth*, 529 U.S. 217, 231 (2000) (The substantial purpose of a university is to facilitate a wide range of speech)); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (academic freedom is of transcendent value); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) ("Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die"). Therefore, the University's restriction upon Dr. Nicholas is unconstitutional because it regulates private speech that is generally assumed to be free of governmental control.

Conversely in *Rust*, the Court upheld the government subsidy funding family planning measures with the condition prohibiting any discussion of abortion. *Rust v. Sullivan*, 500 U.S. 173, 178 (1991). There the Court held that the government could fund certain activities it believes to be of public importance at the exclusion of other activities and such funding would not be a penalty, but rather state encouragement of another activity. *Id*. at 193. Moreover, the government would be allowed to ensure that their funds were being used in the proscribed way. *Id*. at 196. However, the case here is factually different from *Rust* because the restriction here is upon a grant recipient namely Dr. Nicholas, and not upon the program itself. See *Id*. at 197. Conversely, the Respondents will argue that the restriction is solely upon the program and that Dr. Nicholas has simply violated that condition. The condition, however, states that the recipient

will have his publications conform to the academic community's consensus view of science, and this is a restriction upon the recipient and his writings and not upon the functioning of the program itself. (R. at 5). Additionally, the Court noted that the government cannot restrict speech in areas that have traditionally been open to the public for expressive activity or expressly dedicated to expressive activity. *Id.*, at 200 (citing *United States v. Kokinda*, 497 U.S. 720, 726 (1990); *Hague v. CIO*, 307 U.S. 496, 515 (1939); *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)). The Court also noted that universities are traditionally spheres of public expression because they are fundamental to the functioning of our society. *Id*. (Citing *Keyishian v. Board of Regents, State Univ. of N. Y.*, 385 U.S. 589, 603 (1967)). Moreover, the facts here are more similar to those cases because science is traditionally a sphere of public expressive activity, and more than that it is being funded by a university. Namely, science is fundamental to the functioning of our society and by being funded by a university people will view these types of studies as free from governmental control. Therefore, the University's restriction upon Dr. Nicholas is not a condition to ensure proper use of funds, but an unconstitutional restriction of pure speech.

Therefore, the restriction was upon the recipient and is therefore subject to First Amendment limitations.

Therefore, the restriction is unconstitutional because the University created a forum for the free exchange of scientific ideas and discriminated against Dr. Nicholas's viewpoint.

III. EVEN IF GRANT MONEY IS USED FOR A RELIGIOUS PURPOSE, THE ESTBALISHMENT CLAUSE IS NOT OFFENDED.

The Establishment Clause is not violated when grant funds are used for a religious purpose. Public funds may be granted for purposes of religious use in accordance with the Establishment Clause. *See Carson v. Makin,* 142 S. Ct. 1987, 1997 (U.S. 2022). "An Establishment Clause violation does not automatically follow whenever a public school or other government entity "fails to censor" private religious speech." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2447 (U.S. 2022). "The First Amendment's protections extend to "teachers and students," neither of whom "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Id.*, at 2423. Further, the Establishment Clause does not require the government to purge anything that could be viewed as religious. *See Id.*, at 2447. Merely because the speech occurs "within the office" environment does not make the issue dispositive. *See Id*., at 2425. "The line that courts 'must draw between the permissible and impermissible' has to 'accord with history and faithfully reflect the understanding of the Founding Fathers.'" *Id.*, at 2428. "The Establishment Clause must be interpreted 'by reference to historical practices and understandings.'" *Town of Greece v. Galloway,* 572 U.S. 565, 576 (2014). The Establishment Clause is not offended when the reasonable observer can understand the complimentary between religion and the practice. *See Id.*, at 587. First Amendment jurisprudence has shown that incidental benefits to religion do not offend the Establishment Clause. *See Rosenberger v. Rector & Visitors of the Univ. Of Va.*, 515 U.S. 819 (1995).

In *Carson*, the State had difficulty in operating public secondary schools in all 260 school administrative units ("SAU"). *See Carson,* 142 S.Ct. 1987, 1993. The State created a program which allowed students in a SAU without a public secondary school to receive tuition from the SAU at "a public or an approved private school." *Id.* The parents of students in eligible SAUs

were permitted to pick which secondary school the child would attend. *See Id.* However, the program imposed a limitation that the tuition money could not be used at a sectarian school, even if that school met all other accreditation criteria. *See Id.*, at 1994. The Petitioners wished to send their children to sectarian schools associated with the Baptist faith and the Community Church. *See Id.* The Respondent contended that giving funds to a sectarian school is impermissible because religious material would be taught. *See Id.* The State contended this was a violation of the Establishment Clause because the government money would be used for religious purposes. *See Id.*, at 1995. The Court held that permitting public funds to go to a religious school does not violate the Establishment Clause, even if the funds will be used for a religious purpose. *See Id.*, at 1997.

In *Kennedy*, the Petitioner was fired from his role as a high school football coach after offering prayers on the field following games. *Kennedy* 142 S. Ct. 2407, 2414. He prayed at times "when school employees were free to speak to a friend, call for a reservation at a restaurant, check email, or attend to other personal matters." *Id.*, at 2415. Further, the practice of a coach praying in the locker room predated the Petitioner, but he ended that practice. *See Id.*, at 2429. The Respondent contended that Petitioner's actions would be viewed as an endorsement of religion. *See Id.*, at 2426. The Court abandoned the formerly used *Lemon* test and opted to view this issue based on "references to historical practices and understandings." *Id.* Further, the Respondent contended that the Petitioner was acting in a coercive manner because students may see him partaking in religious expression. *See Id.*, at 2431. The Court found that the theory that any religious expression of school staff while at school is impermissible runs afoul of the Establishment Clause, as it would only permit secular speech or expression. *See Id.* Further, the Court emphasized that the Petitioner was taking part of this expression in a time in

which staff were permitted to attend to personal matters, and he did not encourage nor discourage students from joining him in prayer. *See Id.*, at 2417.

In *Town of Greece*, the Petitioner invited local clergy to open monthly board meetings in prayer. *See Town of Greece*, 572 U.S. 565, 570. The Respondents filed suit because all clergy who opened the meeting for the span of nearly 10 years were Christian, and further, many of the prayers used sectarian language by referencing Christian holidays and doctrines. *See Id.*, at 571. The Respondents contended that the sectarian language, specifically referring to Christian doctrines, was impermissible because it would appear to observers that the town was endorsing Christianity. *See Id.*, at 574. Further, they contended this practice may isolate non-Christian citizens attending meetings. *See Id.*, 577. The Court held that the practice of opening a meeting in prayer has historical background, and clergy using sectarian language has been used throughout history, including at the Continental Congress. *See Id.*, at 584.

Even though Dr. Nicholas received state-funded grant money to conduct his research, public money can be used for religious use, and the Establishment Clause will not be offended. Similar to *Carson*, in which parents were permitted to choose the school that would receive tuition money, the University chose Dr. Nicholas as the principal investigator on this research project. (R. at 2). Dr. Nicholas was chosen for this role because of his strong reputation and his intuition on such matters. (R. at 5-6). Further, like in *Carson* where the religious institutions were otherwise qualified for the program, Dr. Nicholas is qualified to conduct research on this once-in-a-lifetime event because of his previous work in observational astrophysics and being a scholar in residence at the Ptolemy Foundation. (R. at 3).

Had it not been but for his employment, the religious speech would not be at issue, however, this is not dispositive pursuant to *Kennedy*, as not everything said or done in the course

of government employment is subject to the Establishment Clause. Here, the terms of the role as Principal Investigator never required Dr. Nicholas to publish an article, but it merely stated that the University would cover incidental costs included with publishing a scientific, peer-reviewed article. (R. at 5). Additionally, the purpose of the grant was to "give the Principal Investigator the resources needed to draw conclusions based on observations and data gathered before, during, and after the Pixelian Comet." (R. at 2). Similar to *Kennedy*, although the Petitioner there was "in the office environment," it was during personal time, here, the same is true. The purpose of Dr. Nicholas's role as Principal Investigator was not to publish articles, but it was merely to collect data using his expertise.

The State and University will contend that it is impermissible to use grant money to publish an article with religious undertones. However, pursuant to *Carson*, even if the money is used for religious purposes, the Establishment Clause will not be violated. Although Dr. Nicholas's speech is sectarian in nature, the Establishment Clause is not violated when public money is used for religious use. *See Carson*, 142 S.Ct. 1987, 1997.

Further, the State and University will contend that the Establishment Clause is violated here because the reasonable observer may conclude that the University is endorsing the speech. However, this Court has adopted an approach based on historical practices and tradition. Here, by President Seawall's own admission, many other universities incorporate religious undertones into academic publications. (Seawall Aff. 7). Further, Dr. Nicholas is not the first person at the University to rely on pagan teachings for scientific use, as many others have relied on "Greeks, Romans, Incas, and Phoenicians." (Nicholas Aff. 18). Thus, it is clear that science and religion have often been interconnected.

Dr. Nicholas's connection between his observations and the Meso-Pagan beliefs are not merely religious, but they are also historic. He found that hieroglyphs discovered in caves may depict previous Pixealian events. (R. at 7). Further, he suggested that it would be scientifically useful to explore the date in which the hieroglyphs were made. (R. at 7). Based on his scientific observations, he further suggested that what he observed appeared consistent with the Charged Universe Theory. (R. at 7). Thus demonstrating that Dr. Nicholas was not merely advancing religious beliefs, but he was using empirical data and observations that support a scientific theory, that so happens to also have religious supporters. This circumstance is not why the Establishment Clause was included in the Constitution.

The State and University will contend that *Carson* is distinguishable because the money there flowed from the State to parents and then to sectarian schools. *See Carson*, 142 S.Ct. 1987, 1993. They will contend that the direct flow of government money to a private individual, who then subsequently uses it for religious purpose is impermissible, even under *Carson*.

In *Rosenberger*, Respondents permitted Contracted Independent Organizations ("CIOs") to be reimbursed for certain costs that the organization incurred as a result of its activities. *See Rosenberger*, 515 U.S. 819, 824. Petitioner's organization requested payment for printing fees associated with its newspaper, which had an overtly Christian perspective. *See Id.*, at 827. The Petitioners were denied payment of the costs because of the religious viewpoint the newspaper promulgated. *See Id.* There, this Court found that "any benefit to religion is incidental to the government's provision of secular services for secular purposes on a religion-neutral basis." *Id.*, at 843. Further, this Court concluded that the Petitioner using a third-party to conduct the printing added an additional degree of separation from any offense to the Establishment Clause. *See Id.*, at 844. Thus, the Respondents providing payment for the cost of printing fees incurred

from an organization with a religious viewpoint is not a violation of the Establishment Clause. *See Id.*

Similar to *Rosenberger*, the money here was provided for the secular purpose of researching and observing the Pixelian Event. (Seawall Aff. 6). Additionally, here, Dr. Nicholas published his findings in a third-party publication, *Ad Astra*. (Nicholas Aff. 17). Accordingly, like in *Rosenberger*, the grant here covered costs of any fees incurred from publication. (R. at 5). Thus demonstrating that any benefit that may have been given to a religious viewpoint is merely incidental to the secular purpose served by the grant.

Therefore, even if the grant money is used for a religious purpose, the Establishment Clause is not violated.

IV. PURSUANT TO *LOCKE V. DAVEY,* IT IS NOT IN VIOLATION OF THE ESTABLISHMENT CLAUSE FOR DR. NICHOLAS TO BECOME A SAGE CONTINGENT ON HIS STATE-FUNDED RESEARCH.

The Establishment Clause is not offended when an individual seeks to obtain devotional status using public funds. *See Locke v. Davey*, 540 U.S. 712, 719 (2004). Extending aid for a student to receive religious instruction is permissible under the Establishment Clause. *See Witters v. Wash. Dep't of Serv. for Blind,* 474 U.S. 481, 483 (1986).

In *Locke*, the Petitioner was awarded a scholarship from the State for postsecondary education. *See Locke* 540 U.S. 712, 715. However, scholarship awardees were prohibited from obtaining a devotional degree if granted the scholarship. *See Id.* The Petitioner wished to obtain a degree in pastoral ministries from a private, Christian college but was subsequently informed his scholarship could not be used for that degree. *See Id.*, at 717. The Court found that it was not in violation of the Establishment Clause to permit students with this scholarship to obtain a

degree in devotional studies. *See Id.*, at 719. The case turned on the Free Exercise Clause, in which the Court held that the condition of the scholarship was not sufficiently burdensome because the student was still permitted to attend a Christian college and take religious courses. *See Id.*, at 725.

In *Witters*, the Petitioner attended a Christian college to obtain a career in ministry, and he was denied a scholarship for visually handicapped persons because of a prohibition on funding religious instruction. *See Witters*, 474 U.S. 481, 483. The Court found that the actual purpose of the scholarship was to aid the well-being of visually handicapped persons by obtaining education and assisting them in future careers. *See Id.*, at 486. Further, the Court held that extending aid to a student for the benefit of receiving ministerial instruction is not in violation of the Establishment Clause. *See Id.*, at 489.

The University and the State will contend, relying on *Locke*, that it is an impermissible violation of the Establishment Clause to use his research to obtain a position as a Sage. However, this Court held in *Locke* that the Establishment Clause is not offended when public funds are used to pursue devotional education. Further, this case is a step removed from *Locke*. Dr. Nicholas did not take this position for the purpose of becoming a Sage. Throughout his research, Dr. Nicholas posted online about his findings and was encouraged by others to apply for candidacy as a First Order Sage. (Nicholas Aff. 14). Pursuant to Locke, even if Dr. Nicholas took this position for his own personal purpose of becoming a First Order Sage, the Establishment Clause is still not violated. Similar to *Witters*, the actual purpose of the grant was to have an individual with expertise in this field lead research on this celestial phenomenon. (Seawall Aff. 5). Further, Dr. Nicholas's application to become a First Order Sage is a

subsequent result of the grant, rather than the primary purpose, as it was not his intention of becoming a Sage when he took this position.

Thus, even if Dr. Nicholas uses this research to become a Sage, the Establishment Clause is not violated pursuant to *Davey.*

CONCLUSION

Therefore, Dr. Nicholas's First Amendment rights were violated because the University created a limited forum and engaged in viewpoint discrimination. Moreover, the University's restrictions fell outside the scope of the program. Further, Dr. Nicholas has established that the Establishment Clause is not violated when a state-funded study results in scientific conclusions that happen to be supported by certain religious beliefs. Additionally, Dr. Nicholas has established that it is not a violation of the Establishment Clause for an individual to subsequently receive a clerical position as the result of government money.

REQUEST FOR RELIEF

WHEREFORE, we request that this Court reverse the lower Court's opinion and grant our motion for summary judgment.

Dated: 01/31/2024

Respectfully Submitted,

/s/ Team 19

CERTIFICATION OF COMPLIANCE

The undersigned, counsel for the Petitioner, hereby certifies the following:

I.) We hereby certify that the work product contained in all copies of Team 19's brief is in fact the work product of Team 19's team members.

II.) We hereby certify that Team 19 fully complied with its law school's governing honor code.

III.) We hereby certify that this hereby brief conforms to the Competition Rules.

/s/ Team 19