No. 23-CV-1981

IN THE

SUPREME COURT OF THE UNITED STATES

COOPER NICHOLAS,

Petitioner,

v.

STATE OF DELMONT and

DELMONT UNIVERSITY,

Respondent.

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

BRIEF FOR THE PETITIONER

TEAM 1
Counsel for Petitioner
January 31, 2024

QUESTIONS PRESENTED

I. Whether a state's imposition of their definition of science onto an accredited scientist as a grant condition is an unconstitutional restriction on his First Amendment right to free speech?

II. Whether the State violates the Establishment Clause by funding research that has primarily scientific importance but indirect religious significance?

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The Fifteenth Circuit's decision is reported at *State of Delmont and Delmont University v. Cooper Nicholas*, No. 23-CV-1981 (15th Cir. 2024). R. at 32-51. The district court's decision is reported at *Cooper Nicholas v. State of Delmont and Delmont University*, No. 23-CV-198 (M.D. Dist. of Delmont 2024). R. at 1-31.

STATEMENT OF THE BASIS FOR JURISDICTION

The United States Court of Appeals for the Fifteenth Circuit entered final judgment on this matter in favor of Respondents on March 7th, 2024. R. at 51. Petitioner timely filed a petition for writ of certiorari, which this Court granted. R. at 60. This Court now has jurisdiction pursuant to 28. U.S.C. § 1254(1).

STATEMENT OF THE CASE

This case arose out of a state-funded university's grant funding condition that limited the grant recipient to conform his research and conclusions to a majority view of what constitutes science. The recipient published findings while using grant resources that had controversial religious and scientific implications, leading the university to rescind his funding to avoid a violation of the Establishment Clause.

I. The Astrophysics Grant

In 2020, Delmont University (Respondent), funded by the State of Delmont (Respondent), wished to promote their new Observatory by establishing a Visitorship in which grant funding would be provided for a reputable astrophysicist to study the Pixelian Event (the Event). R. at 5. The Event is a well-known comet that occurs once every ninety-seven years. *Id.* The grant recipient, designated as the Principal Investigator under the Astrophysics Grant (the Grant), would be provided resources and use of Observatory facilities to study the comet and publish their subsequent conclusions in peer-reviewed journals before, during, and after the Event occurred. *Id*.

The Visitorship ran from 2022 to 2024, and its stated purpose was to advance scientific study of the comet. *Id*. The Grant also required that "study of the event and the derivation of subsequent conclusions conform to the academic community's consensus view of a scientific study". *Id*. After a rigorous application process, Respondents awarded the Grant to Cooper Nicholas (Petitioner), an alumnus of Delmont University and highly qualified astrophysicist with "ground-shifting observations". *Id*.

II. Petitioner's Beliefs

Petitioner credits his upbringing around Meso-American culture and his beliefs as a Meso-Pagan as much of his inspiration for entering the field of astrophysics. R. at 4. A core aspect of the Meso-Pagan faith is the study of celestial objects, and some Meso-Pagans believe various ancient hieroglyphs found throughout Meso-America depict celestial phenomena. *Id*. The lifeforce, a theory that celestial objects are linked to living organisms, is one such phenomena some archeologists believe is depicted by these hieroglyphs. *Id*. Sages are the spiritual leaders of Meso-Paganism and study this connection; Petitioner was interested in becoming a Sage. R. at 57. After Petitioner shared the possibility of applying to become a Sage on social media, multiple Sages informed Petitioner that his completed research on the Event would strengthen his application if he ever applied. *Id*. Petitioner had not made a definitive decision to apply to become a Sage. *Id.* Moreover, Petitioner's possible usage of his findings in his application was contingent on whether they supported his Meso-Paganist beliefs. *Id*. Also, Petitioner is a believer in the Charged Universe Theory, which claims the universe depends on charged particles rather than gravity. *Id*.

III. Second Publication in *Ad Astra*

For the first nine months of the Visitorship, Petitioner developed widely accepted parameters to study the celestial environment prior to the Event. R. at 6. He then published his

baseline findings in *Ad Astra*, a reputable peer-reviewed journal founded by Dr. Ashmore. *Id*. These initial findings generated buzz in the scientific community and were the topic of multiple subsequent conferences and response papers. *Id*. Then, the Event the occurred in 2023 and garnered global attention. *Id.* Six months later in 2024, Petitioner sought to publish his second round of conclusions in *Ad Astra*. *Id*. In the second publication, Petitioner reported standard data on the comet such as changes since its last appearance and phenomena associated with meter showers. R. at 6. Additionally, Petitioner drew similarities between his observations during the Event and ancient hieroglyphs depicting similar celestial phenomena which some Meso-Paganists believe is the lifeforce. R. at 7. Petitioner wanted to further research this connection by exploring the accepted date for these hieroglyphs and collecting data on the post-comet celestial environment. *Id*. He also suggested the electrical interplay of the Event was consistent with the Charged Universe Theory. *Id*. Dr. Ashmore was concerned about the implications of Petitioner's conclusions, but agreed to publish the findings with a disclaimer stating they were not endorsed by the journal. R. at 8. Petitioner agreed to publish with the disclaimer because he was studying the Event from a scientific perspective and was open to whatever conclusions resulted. *Id*. At the same time, he was hopeful his findings would support his Meso-Pagan beliefs and possible Sage application. R. at 9.

IV. Reactions to the Publication and Ensuing Dispute

After the article was published, it garnered international media attention. R. at 9. While foreign astrophysicists thought Petitioner could be "on to something big", the scientific academy discredited his findings. *Id*. Donors and other supporters of the Grant had largely negative reactions to Petitioner's conclusions, and late-night television hosts began associating Respondents with "weird science". R. at 9. Worried about the press and media's reaction, the President of the University, Miriam Seawall (Seawall), reached out to Petitioner via letter in January of 2024. R. at

10. Acting on behalf of Respondents, Seawall informed Petitioner that his second article did not comport with the academy's consensus view of a scientific study, and as such, he would have to conform his future work to that condition for continued funding. *Id*.

Petitioner responded stating that no one "owned science" and that to restrict his work to a majority view was contrary to science's very nature. *Id.* He added Respondents had allowed other University faculty members to reference the writings of other Pagans in their scientific publications. *Id*. Seawall claimed Petitioner was free to publish his theories on the lifeforce and Charged Universe Theory elsewhere, but not under the Grant. *Id*. Petitioner emailed back explaining that if he stopped his research, he would risk loss of the data forever. R. at 11. Seawall gave Petitioner a date by which to restate his agreement to the grant condition, and Petitioner refused. *Id*. The next day, Petitioner was denied admittance to the Observatory and his grant funding was rescinded. *Id*. Respondents issued a statement on social media claiming that these actions were taken "because of a fundamental disagreement…over the meaning of science itself, and that they could not countenance the confusion of science and religion". *Id*.

V. Procedural History

In February of 2024, Petitioner sued Respondents in the United States District Court for the District of Delmont Mountainside Division, requesting the injunctive relief that Respondents allow him access to the Observatory and that he be reinstated under the Grant with full use of all resources until April of 2024. R. at 12. Petitioner contended the grant condition that he conform his work to the academy's consensus view of science was an unconstitutional restraint on his First Amendment right to freedom of speech. *Id*. Petitioner also argued monetary damages would be insufficient relief because he faced losing research of an astronomical event that only occurs once every ninety-seven

years. *Id*. Respondents argued the grant condition did not violate Petitioner's First Amendment rights, and that continued support of Petitioner's work would violate the Establishment Clause. *Id*.

After both parties filed cross-motions for summary judgment, the district court held the Astrophysics Grant condition was unconstitutional and that Respondents' continued support of his work would not violate the Establishment Clause. R. at 30. The district court granted summary judgment to Petitioner on February 20th, 2024, and Respondents appealed to the United States Circuit Court of Appeals for the Fifteenth Circuit. R. at 32. On March 7th, 2024, the appellate court subsequently found in favor of Respondents on both issues, reversing the lower court's judgment. R. at 50. Petitioner then timely filed a petition for a writ of certiorari on the unconstitutional condition and Establishment Clause issues, which this Court granted. R. at 60.

SUMMARY OF THE ARGUMENT

This Court should reverse the Fifteenth Circuit's ruling because the grant condition limiting Petitioner's work to an orthodox definition of science was an unconstitutional infringement on his First Amendment right to free speech. This condition was not a simple parameter of the Visitorship as Respondents contend, but rather an individual limit on Petitioner's speech outside the scope of the program by requiring him to adopt their definition of science. Respondents engaged in viewpoint discrimination in an attempt to suppress Petitioner's controversial ideas because they were worried about the reputation of their Observatory and University. Further, Petitioner was unconstitutionally coerced into accepting the condition, and when he refused, was penalized for exercising his free speech rights. Finally, even if the grant condition was permissible, it fails a strict scrutiny analysis because Respondents had no compelling interest in clearing up public confusion and the condition was not narrowly tailored.

Respondents' continued support of Petitioner's research would not violate the Establishment Clause. The Establishment Clause was written to prevent the government from

making its citizens support its favored religion by requiring them to convert or to support a religious institution through public taxes. Respondents' continued support would not physically nor financially coerce citizens to support Meso-Paganism. Respondents' funding would provide Petitioner with the resources to study a once-in-a-lifetime celestial event which would enrich the scientific community. Petitioner's motivation in studying the Event was primarily scientific as demonstrated by his creation of new scientific metrics and his publications in a scientific magazine. The possibility of Petitioner becoming a Sage in the future does not undermine the undeniable scientific value of his research and findings thus far. Therefore, the Court should reverse the Fifteenth Circuit's decision because Respondents are not at risk of violating the Establishment Clause by continuing to support Petitioner's scientific research of the Event.

ARGUMENT

I. Respondents' requirement that a reputable and innovative astrophysicist conform his work to their definition of science is an unconstitutional condition on Petitioner's First Amendment right to free speech.

This Court should reverse the Fifteenth Circuit's decision to grant summary judgment in favor of Respondents because Respondents imposed an unconstitutional condition on Petitioner. The grant condition that Petitioner conform his work to the scientific community's consensus view of science is unconstitutional under the First Amendment because 1) Respondents attempted to regulate speech outside the scope of the Visitorship, 2) Respondents engaged in viewpoint discrimination, 3) Petitioner was coerced into adopting Respondents' beliefs and unconstitutionally penalized for his refusal, and 4) the condition fails a strict scrutiny analysis.

The unconstitutional conditions doctrine reflects the idea that the government cannot condition receipt of a benefit on what would otherwise be unconstitutional, even if the individual has no "right" to the benefit in the first place. *Perry v. Sindermann,* 408 U.S. 593, 597 (1972). The

government cannot circumvent the Constitution by forcing an individual to surrender their constitutionally protected rights to receive a benefit, especially the right to free speech. *See* Louis Fisher, *Contracting Around the Constitution*, 21 U. PA. J. CONST. L. 1167 (2019). To do so would be to allow the government to "produce a result which it could not command directly" by placing restrictive conditions on important benefits like government funding. *Perry*, 408 U.S. at 597.

The Free Speech Clause of the First Amendment provides that "Congress shall make no law...abridging the freedom of speech". U.S. Const. Amend. I. This Clause is applicable to the states through the Fourteenth Amendment. *Gitlow v. New York,* 268 U.S. 652, 666 (1925). As a state-funded university, Respondent is a state actor to which the Free Speech Clause applies. *Nat'l Coll. Athletic Ass'n v. Tarkanian,* 488 U.S. 179, 192 (1988). Respondent's status as an academic institution is also relevant, with Justice Warren writing in *Sweezy* that "Teachers and students must always remain free to inquire… otherwise, our civilization will stagnate and die". *Sweezy v. State of N.H. by Wyman,* 354 U.S. 234, 250 (1957). Respondents' grant condition violates these constitutional principles in these four ways.

A. Respondents' condition was a restriction on Petitioner's individual speech, rather than a parameter of the Visitorship.

While it is undisputed that the government can set the parameters of their own projects, the government reaches beyond the scope of its power when it uses those parameters to regulate speech outside the program. *Rust v. Sullivan*, 500 U.S. 173, 196 (1991). In *Agency for Int'l Dev*., the Supreme Court considered a Congressional Act that required organizations to expressly oppose prostitution to receive funding to combat HIV and AIDS. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l Inc*., 570 U.S. 205, 208 (2013). The Court invalidated the funding condition, holding that the government cannot "compel a grant recipient to adopt a particular belief as a condition of

funding". *Id*. at 218. Rather than regulate the program itself, the condition regulated the grant recipient by mandating their beliefs and thereby influencing their work outside the government program. *Id*. The Court distinguished this condition from the one in *Rust*, where grant recipients had unfettered ability to perform abortions outside the reach of the government project. *Id*. at 216.

Respondents attempted to regulate speech beyond the scope of the Visitorship by requiring Petitioner to adopt the scientific academy's view of what constitutes science. Like the organizations in *Agency for Int'l Dev*. were forced to adopt an contrary ideological stance as a condition of funding, Respondents attempted to force Petitioner to adopt an ideology at odds with his personal beliefs. Petitioner's personal beliefs exist and shape his work beyond the scope of the Visitorship, and the fact Petitioner received Respondents' funding did not give them the right to restrict Petitioner to their definition of science. *Perry*, 408 U.S. at 597. Respondents awarded Petitioner the Grant knowing his reputation as a free thinker with "ground-shifting observations". R. at 5. To stifle those innovative observations is a condition on Petitioner's individual speech outside the scope of the Visitorship, rather than a benign parameter of the government project like in *Rust*.

The Supreme Court has additionally focused on the method by which speech is restrained, rendering the details of each government-funded program important. *Speiser v. Randall*, 357 U.S. 513, 520 (1958). The distinction between whether the program's purpose is to facilitate private speech or promote a government message is significant. *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 534 (2001). In First Amendment issues, forums like the press are especially important in disseminating speech that communicates multiple viewpoints. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 398 (1984). Similarly, the Court in *Rosenberger* noted that the role student

newspapers play in spreading new ideas must be protected. *Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 844 (1995).

The purposes of the Visitorship and Astrophysics Grant were to facilitate Petitioner's private speech. As a research grant, the Grant's specific purpose was to give the Principal Investigator resources needed to collect data before, during, and after the comet. R. at 5. The program was meant to allow Petitioner to reach his own conclusions, rather than to convey any governmental message about the Event. *Legal Serv. Corp*., 531 U.S. at 534. The Visitorship application process was rigorous because the Principal Investigator was given freedom to create his own research parameters and conclusions, and Petitioner was chosen for this task "due to his eminence in the field". R. at 5. Further, forums of scientific research and publication, like public broadcasting in *FCC* and student newspapers in *Rosenberger*, are similar because they all facilitate new ideas and discoveries. Given the exploratory nature of scientific research and the broad purpose of the Grant, the grant condition was intentionally restrictive to Petitioner rather than the Visitorship.

B. Respondents' condition that Petitioner conform his work to the scientific academy's consensus view of science constitutes viewpoint discrimination.

The Supreme Court has long held that when choosing between funding recipients, the government can consider content, but not viewpoint. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 586 (1998). More specifically, the government cannot discriminate against speech based on the ideas it conveys. *Iancu v. Brunetti*, 139 S.Ct. 2294, 2299 (2019). The line between viewpoint and content discrimination is often fuzzy. *Rosenberger,* 515 U.S. at 831. While content discrimination may be permissible to preserve the purpose of the government program, viewpoint restrictions are improper, especially when the funding encourages private speech and is not meant to convey a government message. *Id*. at 833. In *Rosenberger*, the Court held that a university

violated the Free Speech Clause when it refused to fund a student publication with a Christian perspective. *Id*. at 845. They found that the publication's religious perspective constituted a specific viewpoint, even though the topic of religion itself is broad. *Id*. at 831.

Respondents unconstitutionally discriminated against Petitioner due to his view of what constitutes science. While Respondents may argue their condition is a permissible content restriction pursuant to *Nat'l Endowment for the Arts*, the purpose of the Visitorship was not to convey Respondents' message through Petitioner about the definition of science. R. at 5. The purpose of the program was to facilitate private speech which made any restriction on Petitioner's speech based on the ideas it conveys impermissible. *Iancu*, 139 S.Ct. at 2299. Just as the student publication in *Rosenberger* reflected a particular viewpoint on religion, Petitioner's findings advanced a specific premise that coincidentally involved a controversial scientific theory and a niche religion. In fact, other faculty at Delmont University had previously relied on other religious texts in some of their publications. R. at 58. For Respondents to have allowed these publications but restrict Petitioner is unconstitutional viewpoint discrimination.

The government discriminates based on viewpoint when it attempts to suppress ideas it considers "unpopular" or "annoying". *Murdock v. Commw. of Pennsylvania*, 319 U.S. 105, 116 (1943). In *Speiser*, the Supreme Court held that the denial of a tax exemption coerced the claimants into refraining from what the government considered to be "dangerous" speech. *Speiser,* 357 U.S. at 519. Importantly, the Court often considers the role specific forums play in allowing the dissemination of varying ideas. *Branzburg v. Hayes*, 408 U.S. 665, 705 (1972) (comparison of the importance of freedom of the press to freedom of information acquired by research). These forums, including academic institutions themselves, are marketplaces for ideas by nature and are awarded a higher degree of First Amendment protection when the government attempts to suppress ideas

they deem to be dangerous or controversial. *Keyishian v. Board of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

The condition that Petitioner conform his research and conclusions to the majority's view of science was an attempt to suppress controversial ideas. *Speiser,* 357 U.S. at 519. As evidenced by Seawall's reaction to the academy and press's feedback, Respondents were concerned about the reputation of their Observatory. R. at 9. Wanting to separate themselves from Petitioner's controversial ideas, Respondents turned on the very person they had appointed under the Grant to come to their own conclusions about the Event. R. at 5. Like the protected acts in *FCC*, Petitioner was editorializing by discussing his new conclusions about the Charged Universe Theory and the life-force. The fact that his ideas are not the majority view does not justify their suppression. Further, the forum of scientific research, like the press, is essential for new and innovative ideas to be disseminated, especially when the event to be researched only comes around once every ninety-seven years. *Branzburg*, 408 U.S. at 704. As such, Respondents' attempt to define science was unconstitutional viewpoint discrimination and this Court should protect innovative scientific research with a ruling in Petitioner's favor.

C. Respondents' condition on the Astrophysics Grant funding was a coercive and unconstitutional penalty on Petitioner's speech.

While a potential funding recipient technically has the option of turning down a benefit, the Supreme Court has recognized that sometimes an individual is effectively coerced into accepting an infringement on their constitutional rights in order to avoid loss of funding. *Speiser,* 357 U.S. at 519. The party in need of funding is often stuck between a rock and a hard place, with only "an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden". *Frost v. Railroad Comm'n*, 271 U.S. 583, 593 (1926).

Whether the recipient has a reasonable choice is critical. *Rumsfeld v. F. for Acad. & Inst. Rts.*, 547 U.S. 47, 59 (2006) (in which the Court did not analyze the reasonable choice issue further since the government could directly constitutionally require that higher education institutions allow military recruiters equal access to campuses).

Petitioner was unconstitutionally coerced into accepting the condition that he conform his research and subsequent conclusions to the academy's consensus view of science. He was, as the Supreme Court described in *Frost*, stuck between a rock and a hard place. Petitioner was forced to make an unreasonable choice between adopting a contrary view of what constitutes science or risk losing funding of a project essential to his livelihood. R. at 11. Expecting Petitioner to decline the funds would be to ask him to give up the chance to study a world-famous phenomenon that will only occur once during his lifetime. R. at 5. Unlike the equal access issue in *Rumsfeld* where there was no individual reputation on the line, this condition impacted the very nature of Petitioner's career in scientific research and was a direct restriction on his speech. Respondents presented Petitioner with two options: either lose the data and funding he may never get again or lose his professional integrity by editing his conclusions to satisfy Respondents' definition of science.

Forcing a potential recipient to decline funds they might need in order to protect their First Amendment rights is not a reasonable choice, even when they have no abstract right to the benefit. *Agency for Int'l Dev*., 570 U.S. at 214. Those that refuse to accept the condition are effectively penalized for their speech. *Speiser,* 357 U.S. at 518. These penalties conflict with the Free Speech Clause by allowing the government to indirectly infringe on constitutional rights. *Perry,* 408 U.S. at 597. Furthermore, expecting a potential recipient to comply with a condition while using government funding but assert their actual beliefs "on their own time and dime" is too high of a price to pay for a government benefit. *Agency for Int'l Dev*., 570 U.S. at 218. Organizations like

those in *Agency for Int'l Dev*. risk hypocrisy in their respective industries by maintaining a specific belief outside the government program but asserting a different belief while receiving government funding. *Id*. at 219.

Having no reasonable choice, Petitioner published his findings anyway and was unconstitutionally penalized according to *Speiser* by being locked out of the Observatory and denied grant funding. R. at 11. That Petitioner was willing to face this penalty rather than be coerced into adopting Respondents' beliefs does not make the initial condition any less unconstitutional. Respondents contend that Petitioner could have chosen differently by adhering to their definition of science under the Grant and publishing his real beliefs using his own resources. R. at 10. However, coercing a "ground-shifting" and reputable astrophysicist into this kind of hypocrisy is not part of the scientific process as the appellate court contends. R. at 39. Doing so would harm Petitioner's reputation and discount any subsequent findings he makes outside the auspices of the Visitorship. *Agency for Int'l Dev*., 570 U.S. at 219. Petitioner's integrity could be questioned by his peers, like the foreign astrophysicist who applauded his work, if he abandoned his ideas in his next publication. R. at 9. Forcing Petitioner to choose between coercion and potential hypocrisy or the penalty of losing funding was an unconstitutional infringement on his free speech rights. As such, this Court should rule in favor of Petitioner.

D. Respondents' condition that Petitioner conformed his study to the academy's consensus view of science is unconstitutional under strict scrutiny.

When government seeks to regulate constitutionally protected speech, the need for an especially strong justification from the State is triggered. *R. A. V. v. City of St. Paul,* 505 U.S. 377, 395 (1992). To pass under strict scrutiny, the condition must be narrowly tailored to advance a compelling government interest. *R. A. V.*, 505 U.S. at 395. The restriction must be the least

restrictive avenue possible for advancing the interest and an actual problem must exist. *United States v. Playboy Entertainment Group*, 529 U.S. 803, 813 (2000). In *FCC v. League of Women's Voters*, the Supreme Court explored the least restrictive means requirement and the usefulness of disclaimers in depth. *FCC,* 468 U.S. at 395. The Court validated the government's interest in separating its views from those of public broadcasters yet struck down the government condition that stations refrain from editorializing to receive funding. *Id*. Instead, a disclaimer before the broadcast would "directly communicate to the audience that the editorial reflected only the views of the station rather than those of the Government" in a less restrictive way. *Id*. at 395.

As a restriction on constitutionally protected speech, Respondents' grant condition fails strict scrutiny because it was not narrowly tailored and they had no compelling government interest. Respondents' alleged justification for the condition was to alleviate public confusion of the line between science and religion by promoting the scientific academy's definition of science. R. at 11. According to *Playboy*, this problem must actually exist, yet the record is silent on whether members of the public were confused by Petitioner's conclusions. R. at 9. Like in *FCC*, Respondents were instead worried about Petitioner's ideas being conflated with their own. *Id.* The initial purpose of the Grant was to study the Event, but after seeing the world's reaction to Petitioner's findings, Respondents retroactively claimed a different interest to justify their actions. R. at 5. If their interest in alleviating public confusion was so strong, then they would not have repeatedly assured Petitioner he was free to publish elsewhere. R. at 10. Moreover, Respondents did not definitively show that Petitioner's work confused science and religion in the first place. As such, Respondents' interest cannot be defined as "compelling".

Furthermore, Respondents' condition was not the least restrictive means possible to achieve their supposed interest. *FCC,* 468 U.S. at 395. There is nothing in the record to suggest that

Respondents' means of achieving this interest by limiting Petitioner to their definition of science would solve this "problem". R. at 7. Petitioner's second publication was prefaced by a disclaimer, which is a valid means of achieving separation between multiple viewpoints. *FCC*, 468 U.S. at 395. The disclaimer, which both Petitioner and Ashmore agreed to, delineated between the scientific findings and their possible religious extrapolations, achieving Respondents' alleged interests by preventing the public from conflating the two. R. at 8. In accordance with *FCC* and *Playboy*, this is a less restrictive means of clearing up confusion as opposed to a broad infringement on Petitioner's First Amendment rights.

For the aforementioned reasons, this Court should reverse the Fifteenth Circuit's judgment and declare the Astrophysics Grant condition unconstitutional.

II. A state-funded scientific study conducted by a citizen with private religious beliefs does not violate the Establishment Clause of the First Amendment.

Respondents would not violate the Establishment Clause by funding Petitioner's scientific endeavor to study a celestial phenomenon. The Establishment Clause was written to protect citizens from the overreach of a nonsecular government that uses physical force and taxes to coerce its constituents. Petitioner's work was not religious in nature and therefore Respondents were not sponsoring, endorsing, nor establishing Meso-Paganism. It is erroneous to discount Petitioner's study of the Event as a primarily religious endeavor. Petitioner made numerous valuable contributions to the scientific community but has not taken any steps to promote his position within the institution of Meso-Paganism. The possibility of Petitioner using his findings in his future religious endeavors has no significance on the scientific value of his research on the Event. Respondents were not prohibited by the Establishment Clause from providing resources to an astrophysicist to research an astronomical event.

The Establishment Clause serves to prevent pervasive enmeshing of church and State. A State cannot exclude any members of a faith, because of their faith, from receiving a public benefit. *Everson v. Board of Education of Ewing*, 330 U.S. 1, 16 (1947). The State is prohibited from official sponsorship and financial support of any established church. *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 667 (1970). State funded institutions are state actors. *Nat'l Coll. Athletic Ass'n*, 488 U.S. at 192. The writers of the Establishment Clause sought to prevent the government from sponsoring, funding, or becoming actively involved in religious activity. *Walz*, 397 U.S. at 668. However, government funding that reaches religious establishments because of the independent choices of private citizens does not violate the Establishment Clause. *Locke v. Davey*, 540 U.S. 712, 719 (2004). Religion and science both have vital impacts on society and the Court in *Lynch* stated that "no significant segment of our society… can exist in total or absolute isolation…from government." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). The government does not violate the Establishment Clause by providing funding to nonreligious projects at religious institutions when its results benefit the public. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017).

A. Historical background of the Establishment Clause

Everson is instructive as to how the Court considers the historical context of the Establishment Clause to evaluate whether the government is establishing a religion. The issue was whether the state of New Jersey was in violation of the Establishment Clause by allowing publicly funded school buses to run routes to nonsecular schools. *Everson*, 330 U.S. at 3. To arrive at a decision which honored the intent of the Establishment Clause, the Court recalled the religious persecution which prompted the provision. *Id.* at 8. The Court explained that settlers fled from Europe to avoid mandated participation in government favored churches. *Id.* The religious

persecution in Europe resulted in power struggles between religious institutions as well as countless deaths of citizens. *Id.* European governments tortured and killed their citizens for noncompliance with their religious mandates. *Id.* The Court used this historical context to measure the impact of using public funds to transport children to and from schools with nonsecular teachings. *Id.* at 18. The Court held that the State was not in violation of the Establishment Clause for aiding students in getting to school. *Id.*

Petitioner's possible usage of his findings in his future religious endeavors is a far cry from the religious coercion that the Court described in *Everson*. Writers of the Constitution sought to prevent the government from coercing and brutalizing its constituents in the name of its favored religion. *Id.* at 8. Unlike the oppressive governments described in *Everson*, Respondents would not be threatening citizens with death to convert to any religion. R. at 5. The Grant only funded Petitioner's research of a celestial event. *Id.* If in the future Petitioner decides to apply to become a Meso-Paganist Sage, he would use the information that he gathered during the Event as the basis for his designation. *Id.* at 57. However, the connection between the Grant and Petitioner's religion is attenuated by the fact that he has not made a definitive decision to apply to be a Sage. *Id.* Supposing that Petitioner does decide to use his research as part of his Sage application, Respondents would not actively nor directly be part of that process. *Id.* Respondents publicly stated that they did not endorse Petitioner's findings which differentiated their actions from the kind of religious coercion that the Court described in *Everson*. R. at 9; *Everson*, 330 U.S. at 8. Therefore, funding Petitioner's scientific exploration is not prohibited by the Establishment Clause.

B. Petitioner's scientific research did not advance the establishment of the Meso-Pagan faith.

The Establishment Clause was written to prevent institutional entanglement between the State and any established religion. *Lynch*, 465 U.S. at 688 (holding that a pluralist society rejects an absolutist approach in applying the Establishment Clause). The vital question in Establishment Clause disputes is whether the State's funding makes a substantial difference in establishing a religion. *Id.* at 678. In *Lynch*, the Supreme Court held that the petitioner did not endorse a religious belief by including a nativity scene in a public Christmas display; it was a passive symbol that did not impermissibly advance religion but instead provided historical context to the display. *Id.* at 685. Similarly, Petitioner's scientific research did not contribute to the establishment of Meso-Paganism; the ancient hieroglyphs enriched his research because they were depictions of the Event. R. at 8. Like the petitioner in *Lynch*, Petitioner's usage of historical symbols did not promulgate any religious theory nor induce citizens to practice his religion. R. at 7. The connection between Petitioner's research and religion was insufficient to constitute a violation of the Establishment Clause.

In *Walz*, the Supreme Court communicated the importance of government funding not resulting in the sponsorship of a religion. *Walz*, 397 U.S. at 674. The issue was whether the New York City Tax Commission established a religion by granting tax exemptions to religious organizations. *Id.* at 666. The Court held that the tax exemptions were not in violation of the Establishment Clause. *Id.*at 680. The Court reasoned that the Tax Committee did not specifically grant exemptions to religious institutions, they granted exemptions to religious institutions which were owned by nonprofit corporations. *Id.* at 673. The City did not endorse any single religion as the favored faith.

Id. at 672. The Court concluded that the City did not take sufficient action to constitute sponsorship of a religion by offering a blanket tax exemption. *Id.* at 674.

Similar to the City in *Walz*, Respondents' funds do not constitute sponsorship of Meso-Paganism. The Grant was awarded without any consideration of Petitioner's religious affiliations. R. at 8. The Grant was predicated on the importance of studying the Event, which Petitioner has done. R. at 5, 8. Respondents' funds have only, as intended, supported research of the Event without endorsing Meso-Paganist beliefs. R. at 9. Petitioner's findings were published in *Ad Astra* with a disclaimer that his findings were reflective of his views alone. R. at 8. The Court in *Walz* emphasized the importance of the government refraining from endorsing any religion. *Id.* In accordance with this principal, the publication explicitly disclaimed that Petitioner's findings were his own views. *Id.* The disclaimer sufficiently established a separation between Respondents' and Petitioner's stances. *Id.*

C. The scientific value of Petitioner's research overshadows any connection it has to religion.

Locke is instructive as to how this Supreme Court has previously analyzed Establishment Clause disputes when the State funds a student's religious education. In *Locke*, a public state university created an academic scholarship program for students in financial need. *Locke*, 540 U.S. at 715. The respondent, a scholarship recipient, was informed that as a condition of the scholarship he was not permitted to pursue a degree in theology. *Id.* at 716. The restriction was intended to prevent the State from funding student's degrees which were devotional in nature or "intending to induce" faith. *Id.* The respondent pursued a degree in theology despite the restriction, so he did not receive the scholarship funds. *Id.* at 717. The respondent sued the State alleging a violation of his rights under the First Amendment. *Id.* at 718. The Court held that the petitioner's exclusion of

religious degrees from the scholarship was acceptable and the respondent's rights under the First Amendment were not violated. *Id.* at 720. The Court reasoned that choosing to fund a student's education that was solely religious would violate the Establishment Clause. *Id.* at 25.

Unlike the respondent in *Locke*, Petitioner engaged in a scientific project to produce new data for the entire scientific community. For nine months, Petitioner led the Observatory's efforts in developing parameters for the scientific community to evaluate the celestial environment. R. at 7. In *Locke*, the scholarship recipient was the only person who stood to benefit from the State funding his religious education. *Locke*, 540 U.S. at 717. Here, Petitioner's findings were hot topics at conferences and resulted in various published responses from other scientists. R. at 7. This community engagement demonstrated the widespread impact of Petitioner's findings. *Id.* Petitioner's research created industry standards for studying celestial events by publishing his findings and generating conversation in the scientific community about the Event. R. at 7. Petitioner's contributions to the scientific community distinguish his research of the Event from the petitioner in *Locke*'s purely self-serving theology degree. Therefore, the Court's decision in *Locke* is nonbinding here.

Trinity is instructive as to how the Court has found that State-funded endeavors which benefit the public do not violate the Establishment Clause. *Trinity*, 582 U.S. at 458. In *Trinity*, the petitioner was a religious school in need of playground maintenance because children were getting hurt on the coarse gravel. *Id.* at 453. The school had children of all religious backgrounds in attendance who used the playground. *Id.* at 454. The Missouri Department of Natural Resources had a rehabilitation project for playgrounds of disadvantaged schools, such as the petitioner. *Id.* at 453. The petitioner applied to be serviced as part of the program and was ranked as the fifth best candidate out of forty-four applicants, but the State Department denied them due to their religious

status. *Id.* at 455. The petitioner sued the school for violating its First Amendment rights under the Free Exercise and Establishment Clause. *Id.* at 456. However, the Court stated that paying for a program that uses recycled tires to rebuild a playground was a far cry from the religious coercion that the Establishment Clause was initially meant to prevent. R. at 465. The parties and the Court agreed that the Establishment Clause did not prevent the State from funding the school's playground rehabilitation. *Id.* at 458.

Similar to the respondent in *Trinity*, Respondents refused to continue to fund the otherwise qualified Petitioner because of his religious status. R. at 47. The Court in *Trinity* would likely find Respondents' discriminatory actions to violate the Free Exercise Clause; the Grant was a benefit for which any scientist could apply and Petitioner was eventually denied funds because of his religious affiliation. R. at 54. Petitioner was a member of the Meso-Pagan faith and noted on social media that he may eventually apply to become a Sage. R. at 10. Petitioner mused over the possibility of using his research as his basis for his designation within his faith but did not definitively say whether he would apply nor that he would use his research to aid his religious journey. R. at 57. Petitioner was selected for the Grant because he is a highly accomplished and well-known astrophysicist whose work was "ground-shifting". R. at 5, 7. The potential intersection of Petitioner's scientific findings and his religious endeavors is not dispositive that continued funding of his research would be a violation of the Establishment Clause of the First Amendment.

For the aforementioned reasons, funding Petitioner's research was not a violation of the Establishment Clause.

CONCLUSION

In sum, Respondents placed an unconstitutional condition on Petitioner's First Amendment rights and continued support of Petitioner's work would not cause Respondents to violate the Establishment Clause. As such, this Court should reverse the Fifteenth Circuit's decision and rule in favor of Petitioner.

Respectfully submitted,

TEAM 1

Counsel for Petitioner

APPENDIX A

Constitutional Provisions

U.S. Const. Amend. I.

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

Statutory Provisions

28 U.S.C. § 1254(1).

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

CERTIFICATE OF COMPLIANCE

In compliance with Rule IV(C)(3) of the Official Rules for the 2023-2024 Siegenthaler-Sutherland Moot Court Competition, Counsel for Petitioner certifies that:

1. All work product contained in all copies of our brief is the work product of our team,
2. Our team has fully complied with our school's governing honor code, and
3. Our team has fully complied with all Rules of the Siegenthaler-Sutherland Moot Court Competition.

TEAM 1

Counsel for Petitioner