No. 23-CV-1981

IN THE

SUPREME COURT OF THE UNITED STATES

March Term 2024

COOPER NICHOLAS,

Petitioner,

v.

STATE OF DELMONT and DELMONT UNIVERSITY

Respondent.

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

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BRIEF FOR THE RESPONDENT

Team 26
Counsel for Respondent

QUESTIONS PRESENTED

I. Does a condition on a state-funded research grant place an unconstitutional condition on the recipient's speech when the state confines the condition to the scope of the research and leaves alternative avenues for the recipient to express his ideas?

II. Does a state-funded research study violate the Establishment Clause when the recipient uses the study's research and conclusions to become a minister?

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The opinion of the United States District Court for the District of Delmont, Mountainside Division, is unpublished and may be found at *Nicholas v. State of Delmont*, C.A. No. 23-CV-1981 (D. Delmont Feb. 20, 2024). The opinion of the United States Court of Appeals for the Fifteenth Circuit is unpublished and may be found at *State of Delmont v. Nicholas*, C.A. No. 23-CV-1981 (15th Cir. Mar. 7, 2024).

STATEMENT OF JURISDICTION

The District Court granted Petitioner's Motion for Summary Judgment on February 20, 2024, and Respondent filed a timely appeal. The United States Circuit Court of Appeals for the Fifteenth Circuit had jurisdiction to review the decision under 28 U.S.C. § 1291. The Circuit Court reversed the decision of the District Court on March 7, 2024, and granted summary judgment for the Respondent. Petitioner filed a writ of certiorari, which this Court granted. This Court has jurisdiction over this case under 28 U.S.C. § 1254(1).

STATEMENT OF FACTS

Cooper Nicholas ("Petitioner") is a follower of the Meso-Pagan faith who strives to become a Sage in his religion. R. at 4. Sages are leaders of the Meso-Pagan church, and those who aspire to become a Sage must study the cosmos as part of their application process. R. at 9. Petitioner contends that his religion inspired him to pursue a career as an astrophysicist. R. at 56. Further, Petitioner applied for and received the highly sought-after Astrophysics Grant (the "Grant"), a state-funded grant intended to provide a single recipient with the resources necessary to study the Pixelian Comet's appearance over the Northern Hemisphere. R. at 1, 2. This phenomenon, also known as the Pixelian Event, occurs once every ninety-seven years. R. at 1.

Delmont University (the "University") sought to use the excitement surrounding the Pixelian Event to launch its brand new GeoPlanus Observatory (the "Observatory"). R. at 3, 4. The University aspired for the Observatory to emerge as a prominent research center for the study of the stars and the galaxy. R. at 3, 4.

Among a pool of applicants, the University selected Petitioner to receive the Grant based on his eminence and reputation in the astrophysics field. R. at 5. The Grant was to cover the cost for publications of scientific, peer-reviewed articles related to the study. R. at 5. The articles were to be published by the University's press (Delmont Press). R. at 5. Additionally, the Grant required the study and conclusions of the event to conform to the academic community's consensus view of a scientific study. R. at 5.

For the first nine months, Petitioner's studies conformed with the academy's consensus view of scientific standards, and the articles Petitioner published caught the attention of top scientists. R. at 6. The media paid substantial attention to the University and the Observatory during Petitioner's research of the Pixelian Event. R. at 6. As time passed, Petitioner's research

became of a religious character and it became apparent that his commitment to the study was primarily a religious endeavor, and academic considerations took a secondary role. Notably, Petitioner stated his intention to use his research findings as part of his application to become a Sage. R. at 6, 7.

Petitioner sought to publish his findings about the Charged Universe Theory, a highly controversial perspective that challenges conventional views on cosmic phenomena. R. at 7. However, Petitioner had never publicly or privately expressed that he was a proponent of the Charged Universe Theory. R. at 8.

The University published Petitioner's research and received immediate backlash. R. at 9. The scientific community criticized the article and associated the University with "weird science." R. at 9. In addition, the University became a target for ridicule on late-night television, and there was a notable decline in postgraduate student applications. R. at 9.

Prior to filing the instant case, the President of the University, President Seawall, offered Petitioner the chance to continue his research at the Observatory. R. at 10. President Seawall requested that Petitioner limit his publishing in *Ad Astra* to scientific conclusions that align with the academic community's consensus view of science. R. at 10, 11. Petitioner was given the choice to publish conclusions that align with the academy's consensus view of scientific principles or to decline the government-funded Astrophysics Grant. R. at 11.

STATEMENT OF THE CASE

After refusing to adhere to the terms of the Grant, Petitioner sued requesting injunctive relief to require the University to reinstate Petitioner under the Grant as to his salary, use of the facilities, and payment of research assistants. Petitioner argued the Grant's condition violated his freedom of speech. The State and the University argued the Grant did not violate Petitioner's free speech rights and continuing to support Petitioner's religious conclusions would violate the Establishment Clause. The District Court granted Petitioner's Motion for Summary Judgment, but the Court of Appeals reversed and granted summary judgment in favor of the State and the University. The Court of Appeals held the Grant's condition does not discriminate based on viewpoint, is not a penalty on Petitioner's speech, does not amount to coercion, and is not meant to suppress ideas. Additionally, the Court of Appeals held the Establishment Clause is violated when Petitioner uses state funds to pay for vocational religious education.

SUMMARY OF THE ARGUMENT

To adequately safeguard both governmental interests and individual freedoms, this Court should affirm the ruling of the United States Court of Appeals for the Fifteenth Circuit. This Court's First Amendment jurisprudence acknowledges the right of a government to assert its own ideas and messages either directly or through a third-party. Consistent with that right, government speech is immune from First Amendment prohibitions against viewpoint discrimination. Thus, when a government funds an activity to spread its own message, it can control the content that is expressed to ensure its message is not distorted. In the present case, the State of Delmont exercised its right to assert its message by funding a research program that it believed would help address public confusion between science and religion and placed a condition on the research funds to ensure alignment with this objective.

Further, *Rust* and its progeny establish an important distinction between direct regulations of speech and permissible funding conditions. Direct regulations of speech have the potential to suppress ideas, coerce individuals into surrendering their free speech rights, and penalize them for exercising those rights. However, under *Rust*, when an individual retains the ability to convey his message outside the scope of a government-funded program, the conditions attached to the fund are not coercive, do not suppress ideas, and do not constitute a penalty on the exercise of free speech. Ultimately, when an individual has the choice to accept or decline government funds, and when the condition allows alternative channels for expressions that were restricted by the funding condition, the condition is a valid exercise of the government's rights.

Moreover, tracing back to the inception of this nation, early settlers distinctly expressed the need for a separation between the church and state. Additionally, this Court's Establishment Clause jurisprudence reinforces this notion. *Locke* establishes that states maintain an anti-

establishment interest to not fund the clergy. This Court should uphold its ruling in *Locke* and affirm that the State of Delmont has an anti-establishment interest to not fund Petitioner's pursuit to become a Sage.

Given the complexities of university administrative decisions, especially those aimed at compliance with the Establishment Clause, it is imperative to grant universities substantial deference. The judiciary has acknowledged its lack of tools necessary to navigate the intricacies of nuanced academic judgments. Thus, this Court should defer to Delmont University's grant-allocation decisions to adequately protect both governmental interests and individual freedoms.

ARGUMENT

I. THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT CORRECTLY HELD THAT THE GOVERNMENT GRANT DID NOT IMPOSE AN UNCONSTITUTIONAL CONDITION ON PETITIONER'S SPEECH.

A. States May Impose Conditions on the Receipt of Public Funds to Advance the Objectives of State-Funded Programs.

Governments have the authority to subsidize programs that align with their policy preferences. *Rust v. Sullivan*, 500 U.S. 173, 193 (1991). Thus, when a state government disburses funds to advance its programs or to convey its message, the state can insist the "funds be spent for the purpose for which [the state] authorized". *Id.* at 196. Moreover, governments can define the boundaries of programs they subsidize, for example, by placing conditions on the receipt of the funds. *Id.* at 194. Even viewpoint-based funding decisions are permitted when governments use private speakers to communicate their message. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541 (2001). This practice ensures the governments' message is "neither garbled nor distorted." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 818, 833 (1995). This Court has acknowledged the flexibility for speech restrictions, particularly when the government is conveying its own message, arises from the understanding that "when the government speaks . . . it is . . . accountable to the electorate and the political process for its advocacy." *Bd. of Regents v. Southworth*, 529 U.S. 217, 235 (2000) (explaining that if citizens disagree with the government's speech, they can elect officials with different viewpoints).

1. Petitioner was a government speaker.

The Free Speech clause does not prohibit the government from determining the content of its speech. *Walker v. Tex. Div., Sons Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015). This is because the government possesses the right to assert its own ideas and messages. *See Southworth*, 529 U.S. at 229, 234-35. Furthermore, the government can convey its message

directly or select a third-party to communicate on its behalf. *See id.* at 234-35. Importantly, even when the government elects to fund a third-party to speak on its behalf, it retains the authority to "regulate the content of what is or is not expressed." *Rosenberger*, 515 U.S. at 833. Whether a government restriction on a public benefit is subject to the prohibition on viewpoint discrimination depends on whether the third-party spoke on behalf of the state. *Southworth*, 529 U.S. at 229. Past cases before this Court offer valuable insights into identifying whether a speaker acted as a private citizen or on behalf of the state. *See e.g., Walker*, 576 U.S. at 208-09 (where the court held that messages on license plates were government speech). In *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022), Justice Breyer outlined pertinent factors, including 1) "the public's likely perception as to who (the government or a private person) is speaking;" and 2) "the extent to which the government has actively shaped or controlled the expression."

In this case, Delmont University carefully drafted the Grant documents to ensure the recipient would conduct the research and publish conclusions consistent with the academic community's view of scientific research. Therefore, the State created the Grant condition consistent with its right to assert its own messages and ideas. Furthermore, it is undeniable that the public associated Petitioner's research conclusions with the University. For instance, the scientific community and the media criticized the University when Petitioner published his initial findings in *Ad Astra*. In addition, the University was ridiculed on late-night television and there was a decline in postgraduate student applications. Moreover, the University exercised control over the message it intended to convey. Specifically, the Grant stated Petitioner's research and conclusions must comport with the academic community's view of science. Therefore, Petitioner spoke on behalf of the State.

2. The Grant was not designed to facilitate private speech.

When the government funds a grant to disseminate its own message, it retains control over the message's content. *Rosenberger*, 515 U.S. at 830-31. Conversely, when the government designs a grant to facilitate private speech, it cannot selectively award the grant based on the content of the recipients' speech. *Id.* at 828. In *Rosenberger*, this Court ruled against a university that declined to fund a student newspaper because the newspaper endorsed a particular religious belief. *Id.* at 827. However, *Rosenberger* can be distinguished from the present case in three ways. First, unlike *Rosenberger* where the government was not the speaker, Petitioner here acted as an agent of the University and spoke on its behalf. *Id.* 834-35. Second, in *Rosenberger*, this Court held that the state created a forum for public discourse by making student activity funds available to all student organizations. *Id.* at 828. In contrast, the Grant in the present case was awarded to a sole recipient through a rigorous and competitive selection process. Therefore, unlike the state in *Rosenberger*, the State of Delmont did not create a forum for public discourse. Third, the students in *Rosenberger* sought to use public funds to hire independent third-party contractors to print the students' publications. *Id.* at 823-24. Thus, in *Rosenberger*, the publications were far removed from the university. *See id.* Here, the University sought to directly publish all findings from the research through its own university press. Consequently, the publication is directly associated with the University and serves to facilitate the State's speech.

Furthermore, media attention on the Astrophysics Grant recipient associated Petitioner's research to Delmont University and positioned Petitioner as a representative for the University in all matters related to the Pixelian Event. The University, through the Grant, provided Petitioner with resources and facilitated the study of the Pixelian Event to enhance its scientific reputation. The University's decision to hire Petitioner, based on his distinguished reputation, was the University's means to convey its message globally that its Observatory is a top-tier research

facility. Therefore, the State did not design the Grant to facilitate private speech, and *Rosenberger* does not control the instant case. If this Court determines *Rosenberger* is applicable here, it will limit the government's ability to present its own ideas and messages and make it difficult for the government's intended message to avoid distortion or alteration.

3. The Grant condition is viewpoint neutral.

The unconstitutional conditions doctrine provides that the government may not condition the availability of public funds on individuals surrendering their constitutional rights. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). However, the government is not obligated to financially support an activity solely because the activity is constitutionally protected. *Rust*, 500 U.S. at 182. Moreover, in *Rust*, this Court determined the government does not discriminate based on viewpoint when it funds an activity it deems in the public interest, even if it decides not to "fund an alternative program which seeks to deal with the problem in another way." *Id.* at 193.

Applying *Rust's* principles to the current case, the State has the right to fund speech activities it believes are in the public interest. This right includes funding speech that aligns with the scientific academy's consensus view of scientific standards–a perspective the State considers in the public interest. Thus, the State's choice to fund one type of speech to the exclusion of another aligns with *Rust's* principles and does not constitute viewpoint discrimination. Additionally, the State did not violate Petitioner's right to free speech when it revoked the Grant because the government is not obligated to fund constitutionally protected activities.

Furthermore, the State may "make a value judgment . . . and . . . implement that judgment by the allocation of public funds." *Rust*, 500 U.S. at 192-93 (*quoting Maher v. Roe*, 432 U.S. 464, 474 (1977)). Thus, while the First Amendment places restrictions on a state's authority to compel an *individual* to embrace specific belief in exchange for funding, *Agency for Int'l Dev. v. Alliance*

for Open Soc'y Int'l, Inc., 570 U.S. 205, 218 (2013), the state may nonetheless place conditions of funding on state-sponsored *programs*. *Rust*, 500 U.S. at 195-97.

Here, Delmont University made a value judgment when it placed a condition on the Grant favoring conclusions and publishings that aligned with the academy's view of scientific standards. The University believed the condition directly helped tackle issues of public confusion between science and religion. Therefore, the condition on the Grant did not discriminate based on viewpoint. Further, the condition is placed on the Grant, rather than on the recipient. To illustrate, the condition does not compel Petitioner to give up his beliefs about the Charged Universe Theory or about the Meso-Pagan faith. In fact, President Seawall informed Petitioner he could publish his findings from the Pixelian Event through alternative publication outlets. The University simply required that Petitioner keep any religious findings separate from the University and the Observatory as any conclusions from the Grant could be seen as promoting the views of the State. Therefore, the Grant condition was not designed to discriminate based on viewpoint, but rather to place a condition on the state-sponsored program and to advance the State's objectives.

To be sure, the State's power to regulate the contents of its message is not without limits. Even as a condition on a government benefit, the restriction placed on the Grant would be subject to heightened scrutiny if it discriminated based on viewpoint. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992). Courts apply the strict scrutiny standard to determine whether the government can place limitations on speech. *Id.* The government's restrictions on speech must be narrowly tailored to further a compelling government interest to be constitutional. *Id.*

In the present case, the condition placed on the Astrophysics Grant satisfies the two-pronged strict scrutiny test. Addressing the second prong first, the State has a compelling interest to prevent public confusion between religion and science. Furthermore, because the Grant is state-

funded, any scientific discoveries and findings that result from the Grant may be perceived as a reflection of the State's perspectives. Thus, the condition - which only applies to conclusions and publications arising from the state-funded Grant - is appropriately limited. The condition directly addresses the State's compelling interest to ensure there is no confusion between scientific facts and religious beliefs. Accordingly, even if the Grant's condition were not viewpoint neutral, it still satisfies strict scrutiny because the condition is narrowly tailored to serve a compelling government interest.

B. Conditioning a State-Funded Subsidy to Serve the State's Interest is not a Direct Regulation of Speech.

Direct regulations of speech involve the imposition of laws or regulations that explicitly limit or dictate the content of expression. *See Agency for Int'l Dev.*, 570 U.S. at 213. These regulations can coerce individuals to give up their right to free speech or penalize them for exercising it. *See Speiser v. Randall*, 357 U.S. 513, 518-19, 527 (1958) (distinguishing regulations that coerce or penalize individuals from direct speech regulations). Thus, direct regulations of speech carry a great risk of infringing on constitutional rights. *See Agency for Int'l Dev.*, 570 U.S. at 213. Conversely, funding conditions allow for some regulation of expression to safeguard governmental interest while simultaneously respecting individual liberties. *See Nat'l Endowment for Arts v. Finley*, 524 U.S. 569, 587-88 (1998). To ensure government funds are used to promote its objectives or message, the government "may allocate competitive funding according to criteria that would be impermissible were direct regulations of speech or a criminal penalty at stake." *Id*. This distinction is critical in the present case.

1. A condition on a state-funded grant is not coercive when the recipient is aware of the condition prior to acceptance.

A condition intended to guide private individuals in conveying the government's message differs from a condition that coerces individuals to forfeit their right to free speech. *See Speiser*,

357 U.S. at 519. Furthermore, a state's condition on public funds becomes coercive if the recipient had already depended on those funds before the state introduced the condition. *See Agency for Int'l Dev.*, 570 U.S. at 210-11. This Court in *Agency* invalidated a constraint placed within a federal funding program that required recipients to explicitly oppose prostitution. *Id.* at 220. The condition restricted speech outside the scope of the program and forced recipients to "express [their] beliefs only at the price of evident hypocrisy." *Id.* at 219. Thus, in *Agency*, the condition on the subsidy was coercive. *See id.* at 214-15.

In the present case, the Grant's condition does not coerce Petitioner to relinquish his right to Free Speech for two reasons. First, Petitioner was aware of the condition on the Grant when he accepted it, and he had not previously relied on the Grant funds. Second, Petitioner may use the Grant to continue his research and publish conclusions about the Charged Universe Theory through alternative media outlets. Given the evolving nature of science and scientific theories, Petitioner can conform to the Grant requirements for one publication and subsequently share additional articles elsewhere without the concern of appearing hypocritical.

2. A requirement within a state-funded grant that specifies the activities the state intends to fund does not penalize the grant recipient's speech.

When the state conditions a subsidy to achieve a result it cannot directly mandate, it essentially penalizes the recipient of the subsidy. *See Speiser*, 357 U.S. at 518. However, there is a difference between "direct state interference with a protected activity and state encouragement of an alternative activity." *Harris v. McRae*, 448 U.S. 297, 315 (1980); *Maher*, 432 U.S. at 475. In *Harris*, this Court reaffirmed this difference stating that "[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." *Harris*, 448 U.S. at 317, n.19. The government's choice to fund one activity—childbirth—at the exclusion of another—abortions—was not a penalty because it did not interfere with a protected activity. *Id.* at

315 (explaining that the government's decision not to fund abortion did not place any "obstacle[s] in the path of a women who chooses to terminate their pregnancy.").

Similarly, in the present case, the University's condition on the Astrophysics Grant, which requires research conclusions to align with academic standards, does not penalize Petitioner's speech. As an educational institution, the University is dedicated to upholding academic excellence and evidence-based science. Fundamentally, the Grant condition reflects the University's commitment to fostering a scholarly environment. Therefore, the State's choice to fund science at the exclusion of religion was not a penalty and does not interfere with a protected activity. The Grant condition, in essence, does not constitute a penalty on Petitioner's right to free speech.

Furthermore, the district court erred when it found the denial of the Grant was equivalent to a speech restriction, similar to *Speiser*. *Speiser*, 357 U.S. at 518. In *Speiser*, this Court invalidated a statute that required veterans to take a loyalty oath for a property tax exemption. *Id.* at 518, 527-58 (explaining that the oath requirement amounted to a penalty because it coerced veterans to give up their First Amendment rights). However, *Speiser* acknowledged the government's right to place conditions on funds, provided the government aimed to protect "some interest clearly within the sphere of governmental concern." *Id.* at 527. *Rust*, as a guiding precedent, establishes that *Speiser* and its progeny apply only when the state either directly attempts to control speech, or places a condition on a benefit in a manner that goes beyond the scope of the benefit. *Rust*, 500 U.S. at 196–97 (distinguishing this Court's "unconstitutional conditions" cases such as *Perry, Speiser, and FCC v. League of Women Voters*, 468 U.S. 364 (1984)). This distinction separates *Speiser* from the instant case in two ways.

First, the condition on the Grant does not involve an attempt to directly control the speech of an entire group of citizens but addresses public confusion between science and religion—an

interest well within the sphere of the State's concern. Second, *Speiser's* loyalty oath extended beyond the boundaries of the tax benefit. *See Regan v. Tax'n with Representation*, 461 U.S. 540, 545 (1983) (upholding a tax exemption that mandated beneficiaries to refrain from lobbying the government because unlike *Speiser*, the denial of the tax exemption only affected the excluded activity, i.e., lobbying). Alternatively, the Grant's condition allows Petitioner freedom to discuss and publish research through other grants and publications. Thus, the State's condition does not extend beyond the Grant's scope and is not a penalty on Petitioner's speech.

Finally, the State reserves the right to dismiss an employee who occupies an influential position in the community and whose actions or expressions are contrary to State objectives or policies. *Speiser*, 357 U.S. at 528. Here, the State's objective was for the Observatory to become a leading center for celestial studies. Furthermore, Petitioner's first publication about the Pixelian Event in *Ad Astra* was highly publicized worldwide. Thus, Petitioner was in a position of heightened visibility. Petitioner's research conclusions of the Pixelian Event are contrary to the State's objective to resolve public confusion between science and religion. Therefore, the State has the right to remove Petitioner from his position, and Petitioner's removal is not a penalty on his speech.

3. The presence of a condition on a state-funded grant does not suppress ideas when alternative channels for the restricted expression remain available.

A government restriction on a subsidy suppresses ideas if it "drive[s] certain ideas or viewpoints from the marketplace." *Finley*, 524 U.S. at 587. However, the First Amendment permits reasonable distinctions in content when the government allocates public funds. *See Rust*, 500 U.S. at 192-93; *Regan*, 461 U.S. at 549-50. In fact, the government can distribute funds based on criteria that would be unacceptable if direct regulation of speech were involved. *Finley*, 524 U.S at 587-88. Yet, the government cannot "leverage its power to award the subsidy on the basis

of subjective criteria into a penalty of disfavored viewpoints." *Id.* Here, the University awarded the Grant based on objective criteria, including expertise and experience in the Astrophysics field. Therefore, the University made reasonable distinctions between the candidates in its grant allocation process.

Although the use of subjective criteria to suppress ideas typically violates the First Amendment, the government is allowed to use such criteria in the grant allocation process when dealing with scarce resources and a competitive selection process. *Finley*, 524 U.S at 585-87. Thus, even if this Court finds the University awarded the Grant based on subjective criteria, in cases of limited and sought-after grants, content-based decisions become a "consequence of the nature" of the grant. *Id.* at 585. To illustrate, the Astrophysics Grant is a single highly sought-after award intended to provide a single recipient with the resources necessary to study the once-in-a-lifetime Pixelian Comet event. Thus, the necessity to choose one recipient among numerous applicants based on scientific knowledge, reputation, and innovation makes absolute neutrality in the selection process inconceivable. Consequently, the University's use of subjective criteria was not to suppress ideas but a necessary consequence of selecting the best candidate from a competitive pool of applicants.

A condition on a public grant does not violate the First Amendment if the condition is not meant to suppress ideas and has not led to such suppression. *Regan*, 461 U.S. at 548. Furthermore, in *Regan*, this Court unanimously upheld a law that denied tax deductions for donations made to charities that lobby the government. *Id.* at 550. The rationale for upholding the law was that Congress did not enact it as a means to suppress any ideas, and the law did not have that effect. *Id.* at 548. Rather, the law simply reflected Congress's decision not to fund lobbying activities, and the charities still remained free to receive tax deductions for their non lobbying activities. *Id.* at

544-45; *Rust*, 500 U.S. at 182 (holding the State is not obligated to subsidize all constitutionally protected activities). Similarly, in the present case, the University did not place the condition on the Grant as a means to suppress ideas. On the contrary, the University placed the condition on the Grant to ensure it maintained a clear line between science and religion and aimed to prevent public confusion between the two. Moreover, similar to the charities in *Regan*, Petitioner remained free to speak to his "chosen audience on matters of public importance." *See League of Women Voters*, 468 U.S. at 400 (emphasizing that a statute would be valid if it left alternative channels for the restricted expression); *Legal Servs. Corp.*, 531 U.S. at 546-47 ("[T]here is no alternative channel for expression of the advocacy Congress seeks to restrict. This is in stark contrast to *Rust*."). In fact, Petitioner could continue using Grant's public funds to complete his research and subsequently publish his findings on the Charged Universe Theory through other channels. Therefore, because the condition on the Grant "[does] not in any way restrict the activities of [Petitioner] as a private individual," the condition is constitutionally firm and does not violate the First Amendment. *Rust*, 500 U.S. at 199.

C. Petitioner's Appropriate Recourse Would Have Been to Decline the Grant Funds.

Rejecting government funding is the appropriate recourse for a party who raises objections to specific conditions tied to the receipt of federal funds. *Agency for Int'l Dev.*, 570 U.S. at 214. This principle persists even "when the objection is that a condition may affect the recipient's exercise of its First Amendment rights." *Id.*

Furthermore, the government has the authority to impose reasonable and unambiguous conditions on public funds, and recipients are not compelled to accept them. *See Rumsfeld v. F. for Acad. & Institutional Rts. Inc.*, 547 U.S. 47, 59 (2006). In *Rumsfeld*, Congress passed the Solomon Amendment, through which it imposed a condition on federal funds. *Id.* at 51. The

amendment stated that educational institutions may risk losing government funds if they denied military recruiters' equal access to the university as provided to other recruiters. *Id.* This Court affirmed the constitutionality of the amendment because the amendment offered educational institutions the reasonable choice of either providing equal access to military recruiters or declining the government funds. *Id.* at 58-59. Additionally, under the amendment, universities could preserve their eligibility to receive the federal funds and simultaneously maintain the freedom to express their views "on the military's congressionally mandated employment policy." *Id.* at 60. Therefore, the amendment did not violate the First Amendment.

Similarly, Delmont University offered Petitioner the reasonable choice to either publish conclusions that align with the academy's consensus view of scientific principles or to decline the government-funded Astrophysics Grant. Under the Grant condition, Petitioner can express his views on the Charged Universe Theory and Meso-Pagan religion and remain eligible for the Grant. The condition only stipulates that Petitioner should not express those particular views under the auspices of the state-funded Grant. Therefore, the Grant condition does not violate the First Amendment because Petitioner could have declined the Grant and published his research conclusions elsewhere.

II. THE UNITED STATES COURT OF APPEALS FOR THE FIFTEENTH CIRCUIT CORRECTLY HELD THAT THE STATE OF DELMONT HAS AN ANTI-ESTABLISHMENT INTEREST IN NOT FUNDING CLERGY.

A. The Establishment Clause is Violated when a State-Funded Grant is Used to Pay for Vocational Religious Education.

The Establishment Clause must be analyzed with "reference to historical practices and understandings," and should align with the understanding of the Founding Fathers. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022). Accordingly, this Court's Establishment Clause jurisprudence has focused on the original meaning and history behind the Religion Clauses. *Id.* To

illustrate, this Court examined the "historical position Sunday Closing Laws have occupied with reference to the First Amendment" when it held Sunday Closing Laws do not violate the Establishment Clause. *McGowan v. Maryland*, 366 U.S. 420, 437 (1961). Similarly, this Court affirmed the tax-exempt status of churches by considering the "more than a century of . . . history and uninterrupted practice" of church tax exemptions. *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 680 (1970). Thus, this Court has consistently turned to historical practices and understandings in its analysis of Establishment Clause issues.

1. Historically, this nation has opposed the use of government funds to educate future ministers.

The inception of the Establishment Clause indicates this country's consistent opposition to funding the education of future ministers. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 8 (1947). Historically, Americans have resisted the use of taxpayer funds to subsidize church leaders. *Locke v. Davey*, 540 U.S. 712, 722 (2004). The early settlers that arrived to America from Europe sought freedom from laws that obligated them to support state churches. *Everson*, 330 U.S. at 8-9. In Europe, extensive church-state integration led to severe persecution for those who did not abide by church laws, including torture, imprisonment, and death. *Id.* at 9. When Virginia proposed a tax to fund the state-established church, early settlers, fearing religious persecutions, opposed an establishment of religion. *Id.* at 11-12. The opposition to state-funded clergy was highlighted when Thomas Jefferson and James Madison led a movement to oppose the tax. *Id.* The movement proposed no individual should be compelled to contribute taxes to support a religious institution, and state-sponsored religions most often led to harsh persecutions. *Id.* Most notably, in the preamble to the Virginia Bill for Religious Liberty, Jefferson expressed that compelling one to fund religious beliefs one opposes is "sinful and tyrannical." *Id.* at 13.

Compelling the State to support Petitioner's religious endeavors will contradict the movement Jefferson and Madison led, which played a pivotal role in shaping the First Amendment. Additionally, Petitioner's attempt to have the University fund his religious training dismantles the wall of separation between church and state. This Court should continue its efforts to focus on the original meaning of the Establishment Clause and recognize state-funded clergy as an Establishment Clause violation.

2. Locke *governs this case.*

This Court's Establishment Clause jurisprudence also indicates that states have an anti-establishment interest to not use public funds to pay for ministerial training. *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 770 (2022). In the interpretation of the religious clauses, this Court consistently directs its attention to the original meaning and history behind these clauses. *Kennedy*, 597 U.S. at 510. The history of the religion clauses and the founding fathers' intent around the time this country was founded unmistakably reveal that most states "explicitly exclud[ed] . . . the ministry from receiving state dollars." *Locke*, 540 U.S. at 723. Thus, Americans oppose the government's use of public funds for ministerial training. *Id.* at 722.

Locke illustrates this point. In *Locke*, Washington State awarded student scholarships but constrained the use of the funds for vocational religious education. *Id.* at 717. Washington State justified its position by asserting an anti-establishment interest in not funding the clergy. *Id.* at 722. This Court acknowledged Washington's anti-establishment interest because historical opposition to funding church leaders aligned with the purpose of the religion clauses. *Id.* at 721-22. In addition, this Court acknowledged the longstanding practice in many states that prohibits the use of public funds for vocational religious training and considered the practice an acceptable means for states to avoid an Establishment Clause violation. *Id.* at 723.

In the present case, the State has an anti-establishment interest in not funding Petitioner's pursuit to become a Sage. Petitioner demonstrated his intention to use the Visitorship to become a Sage in the Meso-Pagan religion. Indeed, Petitioner has indicated that completion of a study of this nature is a prerequisite for becoming a Sage. Neither this Court nor the drafters of the Constitution ever intended for state funds to be allocated to supporting ministerial training. Therefore, this Court should adhere to *Locke* and find that the State has an anti-establishment interest in not funding clergy.

3. Trinity*,* Espinoza*, and* Carson *agree that* Locke *applies in cases involving state-supported clergy.*

The government cannot deny public funds to a recipient based on the recipient's religious identity, as established in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017), *Espinoza v. Mont. Dep't. Of Revenue*, 140 S. Ct. 2246, 2261 (2020), and *Carson*, 596 U.S. at 787. However, *Trinity*, *Espinoza*, and *Carson* should not dictate the outcome of this case because discrimination based on religious identity is not at issue here. This case concerns the distinct issue of state-supported clergy—an issue this Court already addressed in *Locke*. *Locke*, 540 U.S. at 715.

In contrast to the state actors in *Trinity*, *Espinoza*, and *Carson*, Delmont University did not deny Petitioner funds based on Petitioner's identity as a Meso-Paganist. The University has simply decided to follow binding precedent by withholding from state-sponsored clergy. Furthermore, *Trinity, Espinoza*, and *Carson* all acknowledge *Locke* controls in cases where public funds are used to support ministerial training. *Trinity*, 582 U.S. at 464; *Espinoza*, 140 S. Ct., 2257-58; *Carson*, 596 U.S. at 788-89. Consequently, *Locke* governs this case because Petitioner wants to use the Grant for vocational religious education and the State has an anti-establishment interest in not funding clergy.

B. This Court should defer to the University's grant allocation process.

This Court has long given substantial deference to university officials in decisions related to academic matters. *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003); *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 (1985) (stating a federal court is not "suited to evaluate the substance of the multitude of academic decisions made daily by faculty members of public education institutions"); *Bd. of Curators v. Horowitz*, 435 U.S. 78, 90 (1978). Importantly, this recognition stems from the inherent complexity of such decisions, which involve the assessment of a myriad of information accumulated over time. *Horowitz*, 435 U.S. at 90. The judiciary lacks the specific tools necessary to navigate the intricacies of these nuanced academic judgments. *Id.* Therefore, courts commonly respect a university's decision about academic affairs unless the decisions deviate from accepted academic standards. *Ewing*, 474 U.S. at 225.

Moreover, universities have the authority to define their own educational goals and research priorities, as well as allocate funds to achieve these objectives. *See Widmar v. Vincent*, 454 U.S. 263, 276-77 (1981). This autonomy reinforces the principle that courts should defer to the professional judgment of university officials in matters pertaining to academic affairs. *Id.* To illustrate, this Court in *Grutter* supported a university's choice to use race, among other factors, in its admissions criteria, recognizing the importance of such decisions in fulfilling its educational mission. *Grutter*, 435 U.S. at 329. Similarly, in *Ewing*, this Court deferred to a university's decision to dismiss a student for poor academic performance and noted: "[w]hen judges are asked to review. . .academic decisions. . . they should show great respect for the faculty's professional judgment." *Ewing*, 474 U.S. at 225.

In the current case, the principles established by this Court regarding judicial deference in academia are particularly relevant. Delmont University is consistently making complex decisions routinely subject to intense public scrutiny. In the face of this scrutiny, the University diligently

considers numerous factors during its decision-making processes, such as input from various faculty members, the University's budget, and extensive research findings. Unlike the University, however, this Court lacks access to the entirety of information available to the University. Consequently, because of this Court's limited capacity to fully assess these factors, this Court may not possess the ability to scrutinize the University's decisions with the same level of insight**.** Therefore, it is both logical and imperative for this Court to extend substantial deference to the University and recognize its unique capacity and expertise in handling nuanced academic matters, particularly when those decisions involve the University's efforts to comply with the Establishment Clause.

Furthermore, universities have the authority to prohibit "First Amendment activities that violate reasonable campus rules." *Widmar*, 454 U.S at 277. In the present case, the University's decision to exercise this authority is underscored by recent events within the Anthropology Department. The offer of a private grant resulted in the publication of conclusions that endorsed specific religious positions. Consequently, concerns emerged within the academic community that casted doubt on the University's quality and reputation. As a result, the University finds itself facing ongoing challenges and must exercise caution in its grant administration process to prevent similar issues from arising in other departments, such as Astrophysics. This emphasizes the importance of upholding reasonable campus rules to safeguard the University's credibility and scholarly standards. Thus, this Court should afford the University substantial deference in its grant allocation processes and allow it to maintain the integrity of its academic standards.

CONCLUSION

For the foregoing reasons, the condition on the Astrophysics Grant does not impose an unconstitutional condition on Petitioner's right to free speech. Furthermore, the State has an anti-establishment interest to not fund Petitioner's religious pursuit to become a Sage. Accordingly, the State of Delmont and Delmont University respectfully request that this Court affirm the judgment of the United States Fifteenth Circuit Court of Appeals.

Respectfully submitted,

Team 26

Counsel for Respondent

APPENDIX A

Constitutional Provisions

U.S. Const. amend. I.

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

Statutory Provisions

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .

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

Per the requirements of Rule IV(C)(3) of the Official Competition Rules 2023-24 of the Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Respondent, certify that:

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

Team 26

Counsel for Respondent