IN THE

SUPREME COURT OF THE UNITED STATES

No. 23-CV-1981

COOPER NICHOLAS,

PETITIONER,

V.

STATE OF DELMONT AND

DELMONT UNIVERSITY,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

TEAM 12

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether a state's requirement that a grant recipient conform his research and conclusions to the academy's consensus view of what is scientific imposes an unconstitutional condition on speech.

II. Whether a state-funded research study violates the Establishment Clause when its principal investigator suggests the study's scientific data supports future research into the possible electromagnetic origins of Meso-Pagan religious symbolism and that investigator has also expressed an interest in using the study to support his religious vocation.

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The United States District Court for the District of Delmont Mountainside Division had jurisdiction to hear the case under 42 U.S.C. § 1983 and 28 U.S.C. § 1331**.** The district court's opinion is unreported and may be found at *Nicholas v. State of Delmont and Delmont University*, C.A. No. [23-CV-1981] (D. Delmont Feb. 20, 2024). The United States Circuit Court of Appeals for the Fifteenth Circuit had jurisdiction on appeal. 28 U.S.C. § 1291; Fed. R. App. P. 4(a)(1)(A). The Fifteenth Circuit's opinion is unreported and may be found at *Nicholas v. State of Delmont and Delmont University*, C.A. No. [23-CV-1981] (15th Cir. Mar. 7, 2024).

STATEMENT OF JURISDICTION

The Fifteenth Circuit Court of Appeals entered judgment upon which the Petitioner filed a petition for writ of certiorari, which was granted. R. at 51, 59-60. This Court has jurisdiction on appeal under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. Procedural History

This appeal arises out of the Fifteenth Circuit's reversal of the District Court's grant of the Plaintiff-Petitioner's Motion for Summary Judgement. Dr. Cooper Nicholas, the Petitioner, requested permanent injunctive relief from the United States District Court for the State of Delmont against the Respondent, the State of Delmont and Delmont University seeking immediate reinstatement under the Astrophysics Grant through March of 2024. The petitioner generally claims that the University has violated his First Amendment rights by placing an unconstitutional condition on his speech. The District Court for the State of Delmont granted summary judgment in favor of the Plaintiff-Petitioner and issued an injunction enforced against the Respondent.

The State of Delmont thereafter appealed to the United States Court of Appeals for the Fifteenth Circuit. At the Court of Appeals, the District Court's grant of summary judgment in favor of the then Plaintiff-Appellee was reversed. Summary Judgment was then granted in favor of the State and University of Delmont as the Defendant-Appellant. The Petitioner-Appellee then sought relief from this Court upon petition. This Court granted review of the Fifteenth Circuit Court of Appeal's decision in favor of the Respondent-Appellant, the State of Delmont.

II. Statement Of Facts

Central to this case is the one in a lifetime phenomenon, the Pixelian Comet. This event occurs in the Northern Hemisphere once every ninety-seven years, and the State of Delmont created a Visitorship in Astrophysics at the University of Delmont to observe the event. R. at 5. In an effort to bring attention to Delmont University's world-class observatory during the appearance of the Pixelian Comet, the State of Delmont approved an Astrophysics Grant (hereinafter, the "grant"), which provided funding for a principal investigator to receive a salary, use of Delmont University's observatory facilities and equipment, funding for research Assistants, and costs associated with the scientific study of the Pixelian Event. *Id.*

The Petitioner, Dr. Nicholas is a fervent believer of his adopted Meso-Paganist faith, a belief system of the Indigenous peoples. R. at 4. Of ancient practice, a central aspect of Meso-Paganist spirituality is the study of the stars. *Id.* Over the centuries, Sages of the faith have sought to study planets and other celestial objects in the belief that these studies will provide insights into human nature. *Id.* They regard ancient hieroglyphs in Meso-America as visual accounts of ancient celestial phenomena and the "lifeforce" connecting all life forms throughout the cosmos. *Id.* The Petitioner credits these very beliefs as his inspiration for entering astrophysics. *Id.*

After years of fundraising efforts from local, state, and federal sources, the University opened the GeoPlanus Observatory at the top of Mt. Delmont. *Id.* Of which, Mt. Delmont is the highest peak in the Delmontain Mountain Range, and "universally" one of the best locations for viewing celestial phenomena in the Northern Hemisphere. *Id.* Due to the unique location and the presence of a state-of-the-art telescope, and its ready access to remote astrophysical sensing equipment, this position was highly sought after. R. at 5. The Petitioner was awarded the grant in the fall of 2021, and he took a leave of absence from his former employer. R. at 5-6. Under a special arrangement with the premiere peer-reviewed journal in the field, *Ad Astra*, he published a series of cosmic measurements from preliminary studies. *Id.* In Spring, 2023, the Pixelian Event occurred, covered by global press with the University as headquarters for the major study. *Id.* The Petitioner sought to publish his observations and interim conclusions in *Ad Astra*. *Id.* But, he added a "historical dimension" related to the "Meso-American indigenous tribes in their ancient religious history." R. at 6-7. He surmised that the Meso-American hieroglyphs may have been primitive depictions of the same celestial events, thereby weaving his religious beliefs into the event. R. at 7. He speculated that the "electrical interplay" that Meso-Pagans consider to be the "lifeforce" of the universe would be further substantiated deeper research. *Id.* The findings he suggested demonstrated an interaction among electrical currents, filaments, atmospheres, and formations of matter that appeared consistent with the "Charged Universe Theory." *Id.*

Upon the issue's release, the article produced a maelstrom of responses from the academy, public, and the press. R. at 9. The academy roundly discredited the suppositions as unprovable from a scientific standpoint, and as outright "medieval." *Id. Ad Astra* likewise could not be seen as endorsing this extreme view and rejected it requiring the study to be delineated with an asterisk. R. at 8. Instead of making a momentous debut on the scientific stage, the school was mocked and

associated with "weird science" with applications for post-graduate studies affected. R. at 9. Throughout exchanges back-and-forth between the Petitioner and President Seawall, it was clearly elaborated that he was free to conclude and publish whatever he wanted on this subject, wherever he liked, but not under the auspices of the grant-funded research, the terms of which he'd accepted as its principal investigator. R. at 9-11. Of which from the terms of the agreement, had been clear from the start that: it was subsidizing only science-based conclusions about the Pixelian Event that comport with the protocols as the University could not be perceived as endorsing his particular religious belief system. R. at 10-11. From that point on, with the refusal to do otherwise, the Petitioner has been prevented from using facilities and removed from his position. R. at 11.

SUMMARY OF THE ARGUMENT

I. Question Presented 1

As to the first issue, this Court should uphold the Fifteenth Circuit's decision that Delmont University's condition on the grant was not a violation of the Petitioner's right to free speech under the First Amendment. The condition limiting the study to academic consensus about what is scientific did not bring about viewpoint discrimination as the Petitioner was not restricted from publishing his personal views on the Pixelian Comet through an independent source.

Even if this Court were to find the condition as a constitutional violation, the recourse revoking the funds from the Petitioner was allowed in this situation. When the Petitioner accepted the grant, he fully understood what the conditions implied for him, and what Delmont University expected. It was the belief and expectation of Delmont University to keep science and religion separate in the conclusions of the grant for the sake of not creating public confusion. Delmont University was protecting its own beliefs, especially when receiving funds from the public. When the Petitioner received the grant, he became the speaker on behalf of Delmont University. And

when he published his findings as Delmont University's beliefs, with both the Charged Universe Theory and Meso-American Religion, Delmont University had a right to protect their position. However, this limitation by the University did not restrict the Petitioner from publishing his personal beliefs on the Pixelian Event through independent sources.

II. Question Presented 2

As to the second issue, the inherent tension present within the Establishment Clause requires this Court to uphold the actions of the University as the Respondent. As the Establishment Clause bars scholarship where it becomes a religious rite of passage, allowing the Petitioner to continue ministerially driven research at a public university on a state-funded grant would violate the Establishment Clause. Supported by tradition, this limitation upon the actions of the Petitioner is constitutional as where state funding has been diverted to support one's journey into ministry, limitations are permissible. The roundly discredited beliefs he sought to publish left University of Delmont in a precarious position requiring the termination of the Petitioner in accordance with their anti-establishment obligations under the First Amendment.

Furthermore, allowing the continuation of ministerial education runs afoul the central value of neutrality at a public academic institution. Limiting the utilization of public funding in the public school system to aid religious groups spreading ministry and faith falls within the purview of the Establishment Clause. Considering the delicacy of a religiously diverse nation, such a reality requires delicate care. With this diversity comes the risk of conflict and social division, and the actions of the University of Delmont sought to preserve those values in harmony under the purpose of the Establishment Clause.

ARGUMENT

I. The condition imposed by Delmont University with a state-funded grant for astrophysics does not violate the Petitioner's First Amendment right to free speech.

The First Amendment's "free speech clause," is applicable to the State through the Fourteenth Amendment, *Gitlow v. New York,* 268 U.S. 652 (1925): "Congress shall make no law… abridging the freedom of speech." U.S. Const. Amend. I. It is axiomatic that the government may not regulate speech based on its substantive content, or the message it conveys. *Rosenberger v. Rector & Visitors of the Univ. Of Va.,* 515 U.S. 819, 828 (1995) (*citing Police Dept. Of Chicago v. Moslsey,* 408 U.S. 92, 96 (1972)). In the realm of private speech or expression, government regulation may not favor one speaker over another. *Id. (citing Members of City Council of Los Angeles v. Taxpayers of Vincent,* 466 U.S. 789, 804 (1984)). Discrimination against speech because of its message is presumed to be unconstitutional. *Id. See also Turner Broadcasting System, Inc. v. FCC,* 512 U.S. 622 (1994). Specifically, when the government imposes burdens on speakers based on the content of their expression. *Id.* at 829 (*citing Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 116 (1991).

However, the long-established principle delineates that the freedom of speech does not confer an absolute right to speak or publish, whatever one may choose, or an unrestricted and unbridled license to do so. *Gitlow* 268 U.S. at 667 (citing Story on the Constitution, 5th ed., § 1580). Congress or the State governments shall not make any laws [or grants] abridging the freedom of speech, but they have the power to protect themselves against unlawful conduct. *See American Communication Ass'n v. Douds,* 339 U.S. 382, 394 (1950). As such, the right to freedom of speech does not give the right of every citizen the right to speak on any subject at any time. *Id.*

The conditions established upon the grant position by the State and University of Delmont are constitutional. This is because: (1) the condition of this grant is not discriminatory or infringe upon the Petitioner' free exercise rights, and (2) even if it was found to be a violation of the First Amendment declining further funding was the proper course of action.

A. The condition on the grant does not discriminate against the Petitioner and should not be found unconstitutional.

The unconstitutional conditions doctrine seeks to prevent the state from conditioning an otherwise available government benefit on an individual's agreement to forego the exercise of a constitutional right. *Perry v. Sindermann,* 408 U.S. 593, 597 (1972). *Perry* held that "even though a person has no "right" to a valuable governmental benefit…the government may not deny a benefit to a person on a basis that infringes his constitutionally protected interest, especially his interest in freedom of speech." *Id.* In other words, the government may not impose a condition on speech that acts as a penalty or produces a result which it could not command directly. *Speiser v. Randall,* 357 U.S. 513, 526 (1958).

However, this Court has differentiated between "direct state interference with a protected activity and state encouragement of an alternative activity." *Maher v. Roe,* 432 U.S. 464, 745 (1977). "Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader." *Id.* at 476. Constitutional concerns are greatest when the State attempts to impose its will by force of law, but where governmental provisions of subsidies is not aimed at the suppression of dangerous ideas, its power to encourage actions deemed to be in the public interests is necessarily far broader. *Regan v. Taxation with Representation,* 461. U.S. 540, 549 (1983).

First, the condition on the grant does not operate on, or by effect, cause viewpoint discrimination or an infringement on the Petitioner's right to free exercise. Second, there is no penalty forcing a choice of religion. Lastly, the conditions of the grant do not amount to coercive pressures upon the Petitioner to choose between the grant itself and his religious beliefs.

i. The condition on the grant is not viewpoint discrimination nor an infringement on the Petitioner's right to free exercise.

The Free Exercise Clause of the First Amendment protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Lyng v. Northwest Indian Cemetery Protective Assn*., 485 U. S. 439, 450 (1988). Under strict scrutiny, when any form of government in the United States seeks to regulate or restrict pure speech, the restriction must pass the strict scrutiny test. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992). To satisfy the test, government action "must advance 'interests of the highest order' and must be narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U. S. 520, 546 (1993). However, a law that is neutral and of general applicability need not be justified by a compelling governmental interest, even if the law has the incidental effect of burdening a particular religious practice. *Id.* at 531.

In *Rust v. Sullivan*, grantees under Title X of the Public Health Services Act, challenged the validity of the Department of Health and Human Services regulations that limited the ability to engage in abortion-related activities. 500 U.S. 173, 177-181 (1991). This Court found, specifically, the government can, without violating the Constitution, selectively fund a program to encourage certain activities they believe to be in the public interest. *Id.* at 193; *See also Maher*, 432 U.S. at 474 (The Court rejecting the claim that unequal subsidization violated the Constitution, but the government may "make value judgment favoring childbirth over abortion, and. . .

implement the judgment by allocation of public funds."). But the government, at the same time, cannot fund an alternative program which seeks to deal with the problem in another way, nor restrict the grantee from pursuing such an alternative. *Id.* at 193, 198.

Just as the Government had no duty to subsidize all speech activity in *Rust*, the University and State of Delmont's actions are no different. The decision here was not to fund speakers, i.e., the Petitioner, who do not conform to the academy's consensus scientific view. R. at 11. However, like *Rust*, the Petitioner was never denied by the University to reach out to alternative outlets to publish his findings of the Charged Universe Theory from the Pixelian Comet. R. at 10. Under strict scrutiny the grant is narrowly construed as it only regulates the conclusions and publications coming from the grant itself. Further, the grant and notoriety of this once-in-a-near-lifetime event would result in association with the event being tied to religion if it was used as a platform for spreading that message. This plainly shows that the University's conclusion comports the academy's consensus view of what is scientific to address the issue of public confusion between religion and science. Thus, with no other less restrictive means to serve that purpose, the conclusions would be seen as promoting the views of the University, which furthers the substantial government interest in separating science and religion. R. at 11.

These same challenges are present when facing governmental action under the Free Exercise Clause. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Free Exercise Clause did not permit Missouri to expressly discriminated against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character. 582 U. S. 449, 450-451 (2016). Likewise in *Espinoza v. Montana Department of Revenue*, a provision of the Montana Constitution barred government aid to any school "controlled in whole or in part by any church, sect, or denomination" violated the Free Exercise Clause by prohibiting families from

using otherwise available scholarship funds at religious schools. 140 S. Ct. 2246, 2282 (2020). But "once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Id.* at 2281.

The state of Delmont and by extension it's universities are allowed to make a value judgment "and implement that judgment by the allocation of public funds." *Rust*, 500 U.S. at 192-93. University's decision on the condition was a value judgment, and though it is true under the First Amendment any limits put on the state "compel[s] a grant recipient to adopt a particular belief as a condition of funding." *Agency for Int'l Dev. v. All for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 218 (2013). However, *Agency for Int'l Dev* never overturned the concept, as stated in *Rust,* that when the Government places the condition on the program, not the participant, "it leaves the recipient unfettered in its other activities" and the participant, this case the Petitioner, has alternative avenues to publish their findings. *Rust,* 500 U.S. at 195-97. Thus, this leaves the present matter a far cry from the likes of *Trinity Lutheran* or *Espinoza* as those operated upon discriminatory practices where one benefits at the cost of another from the operation of discrimination against religion. The Petitioner could have published his conclusions on the Charged Universe Theory and the Meso-America religion through alternative channels and the First Amendment would not be violated. R. at 10.

ii. The condition on the grant creates no penalty on the Petitioner.

It is true that the government cannot impose a condition on speech that would result in a penalty or "produces a result which could command directly." *Speiser v. Randall*, 357 U.S. 513, 526 (1958). However, there is a difference between "direct state interference with a protected activity and state encouragement of an alternative activity." *Maher v. Roe,* 432 U.S. 464, 475

(1977). As ultimately, "a refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." *Harris v. McRae,* 448 U.S. 297, 317 n. 19 (1980).

In other words, *Harris* brings further the condition that the Petitioner must show the reasons for why the condition was placed to conclude it is a penalty, rather than just assuming because there is a condition it must be a penalty. 448 U.S. 297, 317 n. 19 (1980). The condition put on the grant by the University, that the conclusions should conform to the academy's consensus view of what is scientific, is not a penalty to limit the Petitioner's speech. All the University wanted with the limiting condition was to bring a uniformed answer to the public, while preventing potential confusion with findings from the Pixelian Event when mixing science and religion.

In *Spesier v. Randall,* veterans were denied tax-exempt status for refusing to sign an oath of loyalty. 357 U.S. 513, 518 (1958). This Court found such conditions to be a penalty and unconstitutional but did concede that there will be instances when the government could administer conditions on public employees. *Id.* at 527. Here, the University never intended to control Petitioner's speech but instead tried to address possible public confusion in a conclusion that conforms to the ideals of religion and science. Seawall Aff. ¶¶ 7, 9. There is no punishment, the grant does not state that Petitioner cannot look for alternative routes or even speak of the Charged Universe Theory through his Meso-American religion. Instead, the Petitioner was free to publish their research on the Charged Universe Theory through other publications, grants, and institutions, just not this particular grant. R. at 10. It was the University's hope to have the Observatory become the foremost center for celestial studies on this planet. R. at 6. But with Petitioner's publication on *Ad Astra,* that hope became in danger with not only confusion from the public but also negative views coming toward the Observatory in general for straying away from their values by publishing such conclusion (combining science and religion as one). R. at 9. Further in *Speiser,* "public

employees can be deprived of their position and thereby removed from the place of special danger." 357 U.S. at 528. Meaning, the University had every right in protecting their interests to remove Petitioner from the grant, funded by the public, when publishing and advocating for a view that contradicts and leads to a heightened confusion of the public's view on science and religion.[1]

iii. The condition is not coercive against the Petitioner.

The Petitioner and district court claim, and citing to the *Speiser,* the grant had the effect of "coercing the [Petitioner] to refrain from his own proscribed speech." *Speiser,* 357 U.S. at 519. In the case of *Agency,* the Department of Health and Human Services and the United States Agency for International Development were sued for their enforcement of the Leadership Act, where one of the conditions was to "discourage" prostitution in order to receive federal funds to fight the spread of HIV/AIDS, because it violated their right to freedom of speech. 570 U.S. 205, 210-11 (2013). This Court found that the condition was a violation of the defendant's right to freedom of speech by compelling the affirmation of a belief that could not be confined with the scope of the government's program. *Id.* at 218-19. In other words, "a recipient cannot avow the believe dictated by the Policy Requirement. . .and then turn around and assert a contrary belief, or claim neutrality, when participating in activities on its own time and dime." *Id.* at 218.

The present case is not like the situation in *Agency for Int'l Dev.* The Petitioner was free to publish one theory, the academic consensus, and then later expand his findings. R. at 10. The condition was placed on the grant in fear that any of the chosen grantees, like Petitioner, would

[1] In replying to Dr. Nicholas's letter on January 12th, 2024, President Seawall wrote to Dr. Nicholas was free to conclude and publish whatever he wanted about Charged Universe Theory and Meso-American Religion, but not under the conditions placed on the grant, the terms to which Dr. Nicholas agreed to fall upon accepting the grant. Additionally, President Seawall wrote to Dr. Nicholas that the University could not be perceived as endorsing his particular religious belief.

force their beliefs into the conclusions found at Observatory. This is not the situation where the Petitioner was forced to "express those beliefs [of the University] only at the price of hypocrisy." *Id*. at 219. The University's condition is not "forced hypocrisy" as the Petitioner was free to find other sources to publish his personal ideas or findings about the Pixelian Comet and its relation to the Charged Universe Theory. Lastly, the Petitioner applied for and accepted the grant fully aware of the conditions in place, and unlike in *Agency.* R. at 5. Here the condition did not coerce the Petitioner to convey a belief against his own when he had other avenues to publish such research.

B. Even if this Court finds a violation of the Petitioner's First Amendment rights, declining funding was the proper and appropriate recourse.

The appropriate recourse for a party objecting to a condition on the receipt of funding is to decline the funds. *Agency,* 570 U.S. at 206. This mechanism for recourse "remains true when the objections is that a condition may affect the recipient's exercise of its First Amendment rights." *Id.* The one who is giving out the benefit to the recipient may not deny the benefit on a basis that infringes his constitutionally protected freedom of speech. *Id.* (*citing Rumsfeld v. F. for Acad. & Inst. Rts.*, 547 U.S. 47, 59 (2006)). However, the government has the right to assert their own ideas, message, and promote policies that are consistent with their agenda without the First Amendment prohibitions on viewpoint discrimination. *Bd. Of Regents of Univ. Of Wis. Sys. v. Southworth,* 529 U.S. 217, 229 (2000). The government can, without violating the Constitution, create selective funding to encourage certain activities it believes to be in the public interest, with the funding of alternative programs for the receipt. *Rust,* 500 U.S. at 193.

First, denying further funds to the Petitioner was the proper recourse as a result of implications through continuing the efforts of the religious research. And second, by holding this

position the Petitioner's role amounted to being a governmental speaker, thus requiring him to conform to the conditions of the grant.

i. Denying further funds to the Petitioner was the proper recourse.

In *Rumsfeld v. F. for Acad. & Inst. Rts.,* it was alleged that the Solomon Amendment, which tied federal funding for institutions of higher education with giving military recruiters access equal to those provided to other recruiters, infringed the members' First Amendment freedoms to speech and association. 547 U.S. 47, 52-53 (2006). This Court found that the Solomon Amendment did not violate the First Amendment protections of speech, conduct, or expressive association. *Id.* at 57. The Solomon Amendment requirement only regulated conduct and not speech: (1) it was not burdensome to anyone not to speak because it did not dictate the content of required speech; (2) the defendants (law schools) own speech was not affected by the requirement that it accommodate the military's message (the military message was not attributed to the defendants); (3) allowing military recruiters on campus is not "inherently expressive" as flag burning, for example; & (4) the mere act of permitting military recruiters on campus does not require the defendants to form intimate ties with the military or associate them in any meaningful way. *Id.* at 60-70.

Here, the condition on the grant did not deny Petitioner the right to support his personal conclusions, nor does it deny any independent benefit to publish his conclusions related to the Charged Universe Theory. [2] Though the Petitioner wanted to publish the Charged Universe Theory as part of his conclusions, the University refused to fund conclusions of the Charge Universe Theory because of the funds coming out of public's own money. R. at 28. The law school in

[2] *See Regan v. Taxation with Representation*, 461. U.S. 540, 545 (1983) (concluding that because a nonprofit was not denied the right to receive funding when it conformed to the condition, nor denied an independent benefit because of its decision not to conform to the condition, the condition was constitutional).

Rumsfeld, 547 U.S. at 47, provided a "reasonable" choice to either "allow the military recruiters the same access to students afforded any other recruiter or forgo certain federal funds." Similarly, to this case, the University offered Petitioner one choice: to publish the conclusions of the Pixelian Event based on the academic consensus of what is scientific or forgo the funds altogether. The Petitioner was given the option to publish the Charged Universe Theory wherever he wanted, but for the grant, he had to conform to the conditions. R. at 9-10. When Petitioner was first initially offered the grant, he could have declined it and published his conclusions elsewhere. R. at 5. The University was free to impose such a condition directly on Petitioner, and like in *Rumsfeld,* did not infringe on Petitioner's constitutional right to free speech.

ii. The Petitioner was a governmental speaker and had to conform to the limitations of his government funding.

Funding of scientific research and conclusions is, "in contrast to many other subsidies, [because] the Government does not indiscriminately 'encourage a diversity of views from private speakers.'" *See Nat'l Endowment for Arts. v. Finley,* 524 U.S. 569, 586 (1998). The reason for this is because a government entity has the right to assert their own ideas and messages, as well as promote policies consistent with their beliefs, which are not subject to First Amendment prohibitions on viewpoint discrimination. *Bd. Of Regents of Univ. Of Wis. Sys.*, 529 U.S. at 229.

In *Rosenberger v. Rector & Visitors of the Unv. Of Va.*, students brought an action against defendants alleging a violation of the First Amendment for refusal to authorize payments to a third-party contractor for the printing costs of petitioner's student publications. 515 U.S. 819, 825-27 (1995). This Court found that under the First Amendment, a state university may not provide funding to a secular student publication but refuse to provide similar funding to religious student publication based on viewpoint. *Id.* at 832.

The Petitioner claims the situation in *Rosenberger* is like the case at hand, however such a parallel is misplaced. The student organization in *Rosenberger* received funding only after obtaining the status of CIO. *Id. a*t 823, 834. This grant was awarded to a singular selected recipient based on their ability to promote the Observatory, and to render scientific conclusions related to the rare appearance of the Pixelian Comet based on the academic consensus of what is scientific R. at 5. The grant was to be part of the competitive process for awarding the grant to one who would help give the Observatory notoriety with the public. R. at 4-5. The University had the view to have the grant conform to the academic consensus on what is scientific. By the Petitioner becoming the recipient of the grant, he had a heightened public position visibility and became the University's spokesperson related to the Pixelian Event. The Petitioner in his position spoke on behalf of the University when publishing his findings of the Pixelian Event. The grant was subsidized to conduct within the academic consensus on what was scientific, not theories on "lifeforce" and celestial connections to humanity. R at 6-7. If the University allowed conclusions about the Charged Universe Theory, outside the scope of the grant, it would be risking anything to pass as "scientific," including "unsupported analogies of the early alchemists." R. at 8-9.

II. The actions undertaken by Delmont University are constitutional while seeking to maintain traditional understandings of state institutional separation from religion.

"Congress shall make no law respecting an establishment of religion." U.S. Const. Amend. I. The Establishment Clause ensures an individual's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience. *Wallace v. Jaffree*, 472 U.S. 37, 39 (1985). This clause prevents a State from enacting laws that have the purpose or effect of advancing or inhibiting religion. *Zelman v. Simmons-Harris*, 536 U.S. 639, 648-49 (2002).

The Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way that establishes a state religion. *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000). The Establishment Clause maintains the wall of separation between religious entities and the state. *Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16 (1947). When conflict arises, the line that courts and governments must draw between the permissible and impermissible must accord with history and faithfully reflect the understanding of the Founding Fathers. *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014); *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2428 (2022).

With the inherent tension present within the Establishment Clause, this case requires the Court to draw a line and uphold the actions of the University as the Respondent. This is because: (1) allowing the Petitioner to continue ministerially driven research at a public university on a state-funded grant would violate the Establishment Clause, and (2) allowing the continuation of the ministerial education runs afoul the central value of neutrality at a public academic institution.

A. Allowing the Petitioner to continue ministerial-driven research with a state funded grant violates the Establishment Clause.

The Establishment Clause commands the separation of church and state. *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). A State and by extension it's public educational system cannot act to aid one religion, aid all religions, or prefer one religion over another. *Everson*, 330 U.S. at 15. There are few areas where neutrality interests come into play more than the teaching of religion or funding of ministerial education. *Locke v. Davey*, 540 U.S. 712, 721-722 (2004).

The Establishment Clause bars scholarship where it becomes a religious rite of passage. This very conundrum was presented in *Locke v. Davey*, where Washington State created a scholarship program where recipients had discretion to use it at religious and non-religious

schools. 540 U.S. 712, 715-716 (2004). However, there was an express prohibition that prevented recipients from using the state funds to pursue a theological degree that was "devotional in nature or designed to induce religious faith." *Id.* at 716. Washington's actions merely chose "not to fund a distinct category of instruction" as opposed to a particular set of people where the requested funding was for essentially a "religious endeavor" that was "akin to a religious calling as well as an academic pursuit" like that of supporting church leaders. *Id.* at 721–722.[3] Admittedly, Davey stated his religious beliefs were the only reason for him to seek a degree. *Id.* at 721. Consistent with anti-establishment interests, there are "few areas in which a State's anti-establishment interests come more into play" at the historic core of the Establishment Clause in not using public funds to pay for the training of religious clergy. *Id.*

The actions of the Petitioner seized a nonsectarian position and manipulated funding to support his endeavor as a religious rite of passage into ministry. No different than *Locke*, 540 U.S. at 721, the imperative fact present is the fact that the Petitioner admitted to utilizing the grant funding to further his progress in his faith to achieve a priest-like statue of being a Sage. Nicholas Aff. ¶¶ 6, 9. There is no case more on point and directly controlling than *Locke* with the direct admission of his religious beliefs being the motivation to use the funds. These actions of the Petitioner are "akin to a religious calling" that is "devotional in nature or designed to induce religious faith." *Locke*, 540 at 721. With the position the Petitioner held as the lead principal investigator of studying the globally renowned Pixelian Event, it is evident that his research and findings would be the voice of the University. The Petitioner has admitted his Meso-Paganist religion has "always inspired [his] work and [his] excitement for the subject of astrophysics" and

[3] *See also Ill. Bible Colls. Ass'n v. Anderson*, 870 F.3d 631, 640 (7th Cir. 2017) ("[O]nly when the colleges venture into the secular sphere is regulatory oversight required")

"[w]ithout [his] religious beliefs, [he] would have never pursued astrophysics at all." Nicholas Aff. ¶¶ 6, 9. For hundreds of years, these beliefs have been the purpose of the Meso-Paganist faith and take the center of the Petitioner's studies throughout academia. Nicholas Aff. ¶ 7. Studying the Pixelian Comet is critical to the questions in his faith when interpreting the cosmos. *Id.* This study was not just religiously motivated or driven, but nigh interwoven into the Petitioner's very basis for his application to be a Sage going as far share that potential future on his social media. Nicholas Aff. ¶ 13. The plain actions and motivations of the Petitioner treated the grant inconsequentially and used it as a platform to achieve religious advancement to obtain a potential future as a religious leader in his faith. Allowing these actions to continue any further would be inconsistent with the original understanding and purpose of the Establishment Clause.

Tradition supports that where state funding has been diverted to support one's journey into ministry, State limitation on scholarship is permissible under the Establishment Clause. *Locke,* 540 U. S., at 722-723: *See also Trinity Lutheran,* 582 U. S. at 464-465; *Espinoza,* 591 U. S. at 2249-2250; *Carson v. Makin,* 142 S. Ct. 1987, 2001-2002 (2022). The common bottom-line between *Trinity, Espinoza,* and *Carson* is this: each holding operates on discrimination or unequal treatment between religious institutions and receipt of public funding. *Trinity Lutheran,* 582 U. S. at 465; *Espinoza,* 591 U. S. at 2258, *Carson,* 142 S. Ct. at 2002. In *Trinity Lutheran,* a Church received grants that provided funds to resurface playgrounds from the state of Missouri. 582 U. S. at 453-454. There, "disqualifying [religious institutions and organizations] from a public benefit solely because of their religious character" was impermissible. *Id.* at 462. In *Espinoza*, Montana prevented religious schools from receiving subsidies that all private, non-religious schools were eligible for on the grounds that those schools were religious. 591 U. S. at 2251-2253. There, the intentional exclusion of religious schools violated the Free Exercise Clause, even if it was done

with anti-establishment interests. *Id.* at 2254. Lastly in *Carson*, Maine's state law prohibiting students participating in a school-funding program from choosing to use their aid to attend religious schools was unconstitutional. 142 S. Ct. at 1993-1994, 2002.

Each case still preserved *Locke* as a controlling case when a State's anti-establishment interest is implicated in the presence of utilizing funding for ministry. *Trinity Lutheran*, 582 U. S. at 465; *Espinoza*, 591 U. S. at 2258, *Carson*, 142 S. Ct. at 2002. Instead of focusing on six factors of tradition to consider whether the Establishment Clause is implicated, *Locke* has already answered this question.[4] This is not a case concerning the *Trinity, Espinoza,* and *Carson* line of cases with discriminatory public funding based on religion. This is a case with the advancement of personal ministerial goals in the guise of scientific advancement where the university "decided to align [itself] with the academy's consensus view of the scientific enterprise" as the purpose of funding the grant. R. at 53. Going against the University's anti-establishment interests, acting as their voice for a global event happening near once in a lifetime: the publication of the article

[4] *See and compare* 540 U. S., at 722-723 with *Shurtleff v. City of Bos*., 596 U.S. 243, 142 S. Ct. 1583, 1609 (2022) (Gorsuch, J. concurring) ("[O]ur constitutional history contains some helpful hallmarks that localities and lower courts can rely on.... founding-era religious establishments often bore certain other telling traits") citing M. McConnell, Establishment and Disestablishment at the Founding, Part I: Establishment of Religion, 44 Wm. & Mary L. Rev. 2131-2181 (2003).

> "First, the government exerted control over the doctrine and personnel of the established church. Second, the government mandated attendance in the established church and punished people for failing to participate. Third, the government punished dissenting churches and individuals for their religious exercise. Fourth, the government restricted political participation by dissenters. Fifth, the government provided financial support for the established church, often in a way that preferred the established denomination over other churches. And sixth, the government used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function."

produced a maelstrom of criticism in response from academia, the press, and public for proffering discredited and unprovable scientific claims. R. at 9.

The Petitioner's beliefs blinded objective scientific scholarship at the cost of studying a once in a lifetime phenomenon. Following lockstep with tradition, the immediate response from the public matched the response from the Founding Era against financially aiding ministers and leaders in their faith.[5] These actions left University of Delmont in a precarious position requiring the termination of the Petitioner, and recension of the grant position in accordance with their anti-establishment obligations under the First Amendment.

B. The Petitioner's ministerial education implicates central concerns of a state funded neutral civil education that is to be free of religious indoctrination.

Public schools comprise the most vital civic institution for the preservation of a democratic system of government, while being the primary vehicle for transmitting the values on which our society rests. *Plyler v. Doe*, 457 U. S. 202, 221 (1982). Public institutions receive deference for academic judgments on who may teach, what may be taught, how it is taught, and who may be admitted to study. *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). Public funding cannot be used to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals. *Illinois ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign Cty.*, 333 U.S. 203, 211 (1948). The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief. *Cnty. of Allegheny*, 492 U.S 573, 593-94 (1989). This includes

[5] *See* R. Butts, The American Tradition in Religion and Education 15-17, 19-20, 26-37 (1950) (noting the evolution of sentiment to religious establishment with public funding); F. Lambert, The Founding Fathers and the Place of Religion in America 188 (2003) ("In defending their religious liberty against overreaching clergy, Americans in all regions found that Radical Whig ideas best framed their argument that state-supported clergy undermined liberty of conscience and should be opposed").

choosing not to fund ministerial religious education where States have strong, establishment-related reasons for not doing so. *Locke*, 540 U. S. at 719-722.

The utilization of public funding in the public school system to aid religious groups spreading ministry and their faith falls within the purview of the Establishment Clause. *McCollum*, 333 U.S. at 210. In *Illinois ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign Cty.*, religious teachers, employed by private religious groups, utilized school resources and buildings set aside for secular purposes. 333 U.S. at 205-206. While in the context of compulsory education that excluded those who invoked non-sectarian beliefs, there was the use of public-funded property for religious instruction in promoting religious education. *Id.* at 209. This was "beyond all question" that the utilization of the state used public funding to aid religious groups to spread their faith. *Id.* at 210. It fell squarely under the ban of the First Amendment by providing "invaluable aid" to further spready ministry and education to its pupils. *Id.* at 210-212.

The use of state funding to continue the education of the Petitioner to achieve ministerial status, and spreading the message of his faith, violates the Establishment Clause. No different than *Mcollum*, the State of Delmont and by extension Delmont University's resources were used aid in spreading fundamental doctrine of the Petitioner's Meso-Pagan faith. This position granted nigh unfettered access to the University's libraries, grant funding, and the continued use of the Observatory through its general parameters. R. at 11. Not only was the observatory "universally" in the best position geographically, but it was upfitted with the state-of-the-art technology, in a world-class facility. R. at 5. The Petitioner took advantage of this highly coveted position as the principal investigator, and failed to perform as expected. Seawall Aff. ¶ 8. The Petitioner's motivation came from self-benefitting ministerial progression to become a Sage, which he posted on social media. Nicholas Aff. ¶¶ 11-13. The very responsibilities of this Sage position involve

spreading the message of their beliefs as a leader in the faith, setting policy, and establishing doctrine. *Id.* at ¶ 14. The Pixelian Comet, which only appears every 97 years, was used to advance the Charged Universe Theory a core belief of the universal "lifeforce" doctrine of the Petitioner's Meso-Pagan faith. *Id.* at ¶ 10. Not only has this theory been heavily discredited, and goes against the plain terms of the grant, but this squarely amounts to "invaluable aid" by acting as a platform for ministerial education. R. at 9; *See also McCollum,* 333 U.S. at 210-212.

However, where government aid is neutral, independent private choice that directly contributes aid to religion is permissible. *Zelman*, 536 U.S. at 652 (2002). But, the incidental advancement of a religious mission, or the perceived endorsement of a religious message, is reasonably attributable to the individual recipient, not to the government, as their role ends with the disbursement of benefits. *Id.* at 652.

These facts are a far cry from the use of a neutral benefit program where public funds flow to religious organizations through independent choices. Advancement of the Petitioner's Meso-Pagan religion came because of discussions with the leaders of his faith in utilizing the opportunity to further their faith and become a Sage. Nicholas Aff. ¶ 14. This is not incidental, it is purposeful. No differently is the purposeful academic decision by the University of Delmont not wanting to follow the path of the religious funding and instead to align themselves with the academy's consensus view of the scientific enterprise. This decision comes on the heels of a second instance from overtly religious championed positions that caused the University's reputation to be called into question by academia and donors. And as such, the actions in deciding to follow the scientific academic consensus, and terminate the Petitioner for failing to do so, is to receive deference.[6]

[6] *See Bronx Household of Faith v. Bd. of Educ.*, 750 F.3d 184, 199 (2d Cir. 2014)("[Courts] afford the government some leeway in policing itself to avoid Establishment Clause issues, even if it thereby imposes limits that go beyond those required by the Constitution."); *See also*

As a nation with a plethora different religions, people adhere to a wide array of beliefs, ideals, and philosophies.[7] Considering the delicacy of such a diverse reality, James Madison said the compelled sponsorship of religion "will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects." *Everson*, 330 U. S., at 68-69 (appendix to dissenting opinion of Rutledge, J). With this diversity comes the risk of conflict and social division; the very issue the State and University of Delmont sought to avoid through preserving the sectarian nature of this momentous scientific event, in harmony with the fundamental purpose of the Establishment Clause.

CONCLUSION

For the above reasons, the Petitioner's rights to freedom of speech and exercise have not been violated by the condition placed on the grant. Further, the actions of the State and University of Demont were necessary to preserve anti-establishment interests. Thus, the Petitioner's claim should be denied, and the judgment of the Fifteenth Circuit Court of Appeals affirmed.

Respectfully submitted,

Team 12

Counsel for Respondent

Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 225 (1985) (leaving deference to a university's choice on the academic standards and educational fitment of programs).

[7] *See* Pew Research Center, America's Changing Religious Landscape, pg. 21 (May 12, 2015).

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;

42 U.S.C. § 1983

Every very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Fed. R. App. P. 4(a)(1)(A)

In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

Fed. R. Civ. P. 56(a)

A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

CERTIFICATE OF COMPLIANCE

Pursuant to the Seigenthaler-Sutherland Official Rules, Team 12 certifies that (i) this brief is entirely the work product of Team 12 competition members; (ii) Team 12 has fully complied with its school's governing honor code; and (iii) Team 12 has complied with all Competition Rules for the Seigenthaler-Sutherland Cup.

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