No. 23-CV-1981

In the Supreme Court of the United States

COOPER NICHOLAS
Petitioner,
v.

STATE OF DELMONT AND DELMONT UNIVERSITY
Respondents.

On Writ of Certiorari From The United States Court of Appeals For The Fifteenth Circuit

BRIEF FOR THE PETITIONER

Team 25
Counsel for Respondent

QUESTIONS PRESENTED

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

II. Does a state-funded research study violate the Establishment Clause when its principal investigator suggests the study's scientific data may support 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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JURISDICTIONAL STATEMENT

The United States District Court for the District of Delmont Mountainside Division granted the motion for summary judgment in favor of the plaintiff. The United States Circuit Court of Appeals for the Fifteenth Circuit issued their opinion and reversed the district court's decision on both issues, granting summary judgment in favor of the Appellant. Petitioner then filed a writ of certiorari, which this Court granted. The jurisdiction of this Court is proper under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States Constitution states: "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."

STATEMENT OF THE CASE

A. The University of Delmont Opened the GeoPlanus Observatory to View the Celestial Phenomena known as the Pixelian Event

In the fall of 2020, the University of Delmont opened the GeoPlanus Observatory atop Mt. Delmont which is universally considered one of the best locations for viewing celestial phenomena from the Northern hemisphere. App. 4. The State of Delmont created the Visitorship for the specific purpose of advancing scientific study of the astrophysical phenomenon, known worldwide as the "Pixelian Event." App. 1.

The observatory is staffed by a faculty member, Herbert Van Pelt Ph.D., as well as other faculty members who teach and publish in the field. R. at 4. The University and its supporters hope the Observatory will become one of the foremost centers for celestial study in the world. R. at 5.

B. The State of Delmont Approved an Astrophysics Grant to Study the Pixelian Event.

To further the objective, the State of Delmont approved an astrophysics grant which provides funds for one principal investigator to receive "a salary; use of Delmont University's observatory facilities and equipment; funding for research assistants; and incidental costs associated with the scientific study of the Pixelian Event" and "all costs associated with the publication of scientific, peer-reviewed articles related to that event, publication of a final summative monograph on the event, and the creation of a public dataset that will include the raw data upon which conclusions were reached." App. 1-2. The purpose of the grant was to give the Principal Investigator the resources needed to draw conclusions based on observations and data gathered before, during, and after the Pixelian Event. App. 2.

C. Cooper Nicholas, Alumnus of Delmont University and Renowned Astronomy and Physics Scientist, Received the Grant.

After a competitive application process, Dr. Cooper Nicholas, distinguished alumnus of Delmont University, who earned his B.S. and Master's degrees in astronomy and physics before earning his Ph.D. in astrophysics from the University of California, Berkeley, received the grant. App. 2. Nicholas was raised in Meso-American culture and adopted Meso-Paganist faith, which emphasized the study of the stars and the ancient hieroglyphs as visual accounts of ancient celestial phenomena. App. 4.

The grant required that the study of the Pixelian event and the derivation of the subsequent conclusions conform to the academic community's consensus view of a scientific study. R. at 5. The duration of the grant, as stated in its formal "Statement of Work," was meant to allow for gathering data and drawing conclusions derived before, during, and after the comet's appearance. App. 5.

For the first nine months of his visitorship, Nicholas led the observatory's efforts to develop and conduct a variety of widely accepted parameters for measuring the celestial environment preceding the Pixelian Event so as to have a baseline for later comparisons. App. 6.

D. Before the Pixelian Event, Nicholas Observed the Celestial Environment and Published a Series of Cosmic Measures.

Prior to the Pixelian event, Nicholas developed and conducted a variety of parameters to measure the celestial environment prior to the Pixelian Event to compare to the environment after the Pixelian event. App. 6. Based on these findings, Nicholas published a series of cosmic measurements signaling something momentous was occurring in the galaxy prior to the Pixelian Event. App. 6.

E. The Pixelian Event Occurred and Nicholas Published his Observations and Conclusions.

In Spring of 2023, the Pixelian event occurred, and Dr. Nicholas and his team continued their planned observations and collected their data. App. 6.

Six months after the Pixelian event, Nicholas sought once more to publish his observations and interim conclusions in Ad Astra. App. 6. In this article, he explained the standard data derived from the comment's travel coupled with a historical dimension, noting that the atmospheric phenomena and electro-magnetic disturbances in the cosmic environment that he observed before, during, and immediately after the comet's appearance were consistent with the kinds of cosmic changes remarked upon for centuries in various cultures, in particular those related to the Meso-American indigenous tribes in their ancient religious history. App. 6-7. Of this, he suggested that the occurrence demonstrated an interaction amount "electrical currents, filaments, atmospheres, and formations of matter that appeared consistent with the "Charged Universe Theory."" App. 7. Charged Universe theory is a controversial belief, contending that cosmological phenomena throughout the universe are dependent upon charged particles, rather than gravity. App. 7.

F. Dr. Ashmore Thought Nicholas' Theory Was "Groundbreaking" But Published the Article With a Qualification that the Publication Did Not Endorse His Observations.

Dr. Ashmore did not know Dr. Nicholas was a proponent of the Charged Universe Theory but believed his theory was "groundbreaking" and did not believe an academic publication such as Ad Astra could be seen as endorsing this view, although she and her colleagues could not disprove this theory. App. 8.

Because of this, Dr. Ashmore agreed to publish the article with the qualification that would state that Nicholas' interpretation of his observations did not have endorsement of the publication, its editors, or staff. App. 8.

G. Dr. Nicholas Was Hopeful His Findings Could Align With Meso-Paganism But Was Open to "Whatever Findings Were The Result."

Dr. Nicholas did not mind that the state prefaced the article as long as she published his findings because "his focus was on studying the Pixelien event from a scientific perspective and he was open to whatever findings were the result, regardless of their religious implications." App. 8. However, he was hopeful that if his findings aligned with Meso-Paganism, he could use his findings to support his application to become a Sage in the Meso-Pagan faith. App. 9.

Although the America press criticized the issue's release, the foreign press picked up on counter voices coming from astrophysicists in Meso-America, Australia, and Europe who said that Nicholas might "well be on to something big, but only the long view, dependent on further study, would tell the tale." App. 9.

H. After The Publication, the University President Communicated to Nicholas That His Findings Did Not Comply With the Grant.

After the publication of the article, Dr. Van Pelt, the director of the observatory, received calls from the University President, Meriam Seawall (hereinafter "President Seawall") due to negative press and embarrassed donors as well as the legislative and executive supporters who had secured the Astrophysics Grant's approval. App. 9.

On behalf of the University and Observatory faculty, President Seawall Communicated a letter to Dr. Nicholas on Jan 3, 2024. App. 10. The letter communicated that Nicholas' publication "could be seen as coming perilously close to the kind of quantum leaps and unsupported analogies of the early alchemists" and his findings were said to be "in part based on foundational texts religious in nature, not empirical." App. 10. Moreover, that funding of the grant was dependent on his agreement to limit his research experiments and conclusions to those comporting with the language of the state's grant: "the study of the event and the derivation of

subsequent conclusions [that] conform to the academic community's consensus view of a scientific study."

Dr. Nicholas' responded on January 6, 2024, stating that he would not be told what to conclude or what his observations might rest and that any attempt by the observatory to censor his research or conclusions went against everything science stands for – especially, since the University had not stopped other scientists from referencing or relying on the writings on other pagans. App. 10.

President Seawall replied on January 12, 2024, stating that Nicholas was free to to conclude and publish whatever he wanted on the subject but not under the criteria of the grant-funded research, the terms of which he'd accepted as its principal investigator. App. 10. Moreover, the University did not want to be perceived as endorsing his particular religious system. App. 12.

I. Dr. Nicholas Explained There Was Nothing Unscientific in His Conclusions And The Observatory Denied Nicholas' Admittance to the Observatory – Repealing The Grant.

Dr. Nicholas explained there was nothing unscientific in his conclusions and if his conclusions evolved throughout his research and aligned with ancient lineage, the State's objections would be considered moot. App. 11. However, to stop his research now, at a time prior to his post-event data analysis, would compromise his entire project and risk the loss of data forever. App. 11.

President Seawall gave Nicholas a date to reinstate his agreement to limit his study and conclusions to the academic community's consensus view of scientific study, but Nicholas immediately replied that his study and conclusions were scientific and that the school should recognize them as such. App. 11.

The observatory changed security to deny Nicholas' admittance and Seawall and the Observatory made a statement that the measure was taken due to fundamental disagreement with Dr. Nicholas over the meaning of science itself, and that they could not countenance the confusion of science and religion. App. 11.

SUMMARY OF THE ARGUMENTS

I. Although the government has the ability to selectively fund programs, they are not able to impose a condition that compels a grant recipient to accept a specific belief as a prerequisite for receiving funding. As state actors, the University of Delmont infringed on Dr. Nicholas' speech by discriminating based on viewpoint and subsequently penalized him for not conforming to the University's consensus view of "scientific" by refusing access to the lab, cutting his funding, and coercing him to adopt a view in which he does not believe.

The State's conditional funding forces Dr. Nicholas to choose between suppressing his speech or forgoing the grant's funding. The State's refusal to fund the grant unless Dr. Nicholas abandons his belief of the Charged Universe Theory and accepts the academy's personal view on the definition of science, becomes a conditional funding requirement that is unconstitutional. Additionally, the State's coercive behavior attempting to compel Dr. Nicholas abandoning his beliefs and conforming to those of the State by revoking access and funding demonstrates the State's unconstitutional use of its power. If Dr. Nicholas published under the Astrophysics Grant, and then published his findings on the connection between the Charged Universe Theory and the Pixelian Event, the result would be a compelled contradiction and as a result, his credibility would be questioned. As a private speaker, Dr. Nicholas was not acting as a mere conduit for the State's messages, but rather the Astrophysics Grant was meant to encourage the study of the Pixelian Event, which is what Dr. Nicholas did.

Lastly, the Grant condition does not survive strict scrutiny and subsequently fails. Any law that is questioned in regard to its constitutionality, must survive strict scrutiny in order for it to be upheld. The restrictions are both over and under inclusive and therefore, not narrowly tailored. Furthermore, the State cannot show that restricting Dr. Nicholas' speech would aid in

solving the government interest of limiting public confusion between science and religion. Therefore, the Court should reverse the Court of Appeal's judgment in favor of Cooper Nicholas.

II. The Establishment Clause seeks to maintain the constitutional wall of separation between religious entities and the state and ensure the state does not advance nor deter religion. Dr. Nicholas' findings were not religious in nature, and any religious implications were merely incidental. His publication in Astra relayed the data and observations derived from the Pixelian Event and additionally, he added that the comet's appearance was consistent with cosmic changes attributable to the Meso-American religious history.

Moreover, the Establishment Clause was not implicated because the government provided facially neutral funding which merely secondarily reached the topic of religion based on the Dr. Nicholas' private choices to discuss the Pixelian Comet's religious implications. The purpose of the grant was to give Dr. Nicholas' the resources to draw conclusions regarding the Pixelian event, not to promote religion, and as such, the Establishment Clause cannot be violated. As such, *Locke v. Davey* cannot be implicated because the state funds were not used to pay for religious training of clergy, but instead, were used to make conclusions regarding the Pixelian Event and the independent choices of Dr. Nicholas' to obtain a clergy position is far too attenuated to raise Establishment Clause concerns.

Lastly, Dr. Nicholas' publication could not be viewed as an endorsement of religion because no reasonable reader of Ad Astra could conclude that the state sponsored, endorsed, or was actively involved in Dr. Nicholas' findings because the publication included a disclaimer. Moreover, no reasonable person could believe the government was attempting to coerce the reader to participate in the Meso-Pagan faith through Dr. Nicholas' religious predictions.

ARGUMENT

I. THE STATE'S UNCONSTITUTIONAL CONDITIONS IMPOSED ON DR. NICHOLAS' FUNDING AND SPEECH VIOLATED HIS FIRST AMENDMENT RIGHTS

The First Amendment's free speech clause states, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. Const. Amend. I. The United States Supreme Court, in *Perry v. Sindermann*, held that even though individuals don't have a *per se* right to a government benefit, at the same time, 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." 408 U.S. 593, 597 (1972). Although the government has the freedom to selectively fund programs, they may not impose conditions which would "compel [] 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). Nonetheless, if the government's conditions are aimed at the program itself, and "leave[s] the [recipient] unfettered in [his] other activities," then there is no impermissible burden on one's freedom of speech. *Rust v. Sullivan*, 500 U.S. 173, 193 (1991). Here, it is undisputed that the grant-making and monitoring activities of Delmont University and the State of Delmont are state activity subject to First Amendment oversight. App. 14. As state actors, Respondents infringed on Dr. Nicholas' speech by discriminating based on viewpoint and, in turn, penalized him for not conforming to the University's consensus view of "scientific" by refusing access to the lab, cutting his funding, and coercing him to adopt a view in which he does not believe. Therefore, this Court should affirm the District Court's judgment in favor of Dr. Nicholas.

A. Respondents' Unconstitutional Conditions Discriminate Based on Viewpoint

Under the unconstitutional conditions doctrine, a government is unable to withhold a benefit from an individual if doing so would infringe upon their Constitutional rights. *Perry v.*

Sindermann, 408 U.S. 593, 597 (1972); *Speiser v. Randall*, 357 U.S. 513, 519, 526 (1958). For example, the Supreme Court said it was an impermissible use of the State's power to condition tax exemptions on World War II veterans who had to sign an oath that they would not advocate for overthrowing the state or federal government by violence or otherwise. *Speiser*, 357 U.S. at 526. In addition, the government may not punish public employees for expressing contrary views, or public criticisms, for which the government disagrees with. *Sindermann,* 408 U.S. at 598 (finding unconstitutional the termination of a public university official for making public comments against the Board of Regents). Furthermore, in *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), the Supreme Court of the United States affirmed that, " no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *see Agency for Int'l Dev,* 570 U.S. at 218 (concluding that forcing a grant recipient to adopt a specific belief as a condition of funding amounts to a First Amendment violation, because "[b]y requiring recipients to profess a particular belief, the Act goes beyond defining the limits of the federally funded program to defining the recipient.").

Here, the State's conditional funding forces Dr. Nicholas to choose between suppressing his speech or forgoing the grant's funding. Similarly to *Speiser*, the State here conditioned a governmental benefit on the freedom of speech rights of Dr. Nicholas, and in doing so, just like as in *Speiser*, the State has impermissibly interfered with the exercise of a constitutional right. The Supreme Court has made clear that when the government compels an individual to hold a particular view, especially when it is in contrast with their own personal beliefs, with the promise of eligibility for a benefit they would have otherwise qualified for, it is an unconstitutional interference with one's constitutional rights. Therefore, the State's refusal to fund the grant

unless Dr. Nicholas abandons his belief of the Charged Universe Theory and accepts the academy's consensus view on the definition of science, becomes a conditional funding requirement of a government benefit that this Court in *Speiser* deemed to be unconstitutional. Furthermore, just as in *Sindermann*, where this Court held that punishment for differing viewpoints was unconstitutional, here, just because Dr. Nicholas' view of science is in contradiction with the State's, does not mean that the State may use that as a basis to terminate his funding.

The State's proscription of what is "scientific" cuts against this Court's warnings detailed in *West Virginia Board of Education*. Although the State is adamant on Dr. Nicholas limiting his scientific findings to conclusions which comport with the academic community's consensus view, what the State fails to address is the large body of foreign academics from Australia to Europe who noted that Dr. Nicholas "might well be on to something big . . . ." App. 4. Therefore, just as this Court in *Agency for Int'l Dev.* warned, the government cannot force a grant recipient to adopt a specific belief–namely, *their* view of what's deemed the academic consensus of science. The State's refusal to accept Dr. Nicholas' scientific research, even when he affirmed that he was "open to whatever findings were the result, regardless of their religious implications," demonstrated the State's unconstitutional use of their power. (R. at 8).

B. Delmont University's Grant Condition is Coercive in Nature, Aimed at Suppressing Ideas, and Encourages Compelled Speech and Contradiction

"A grant condition aimed at suppressing ideas, is coercive in nature and leads to compelled speech and contradiction" *Speiser,* 357 U.S. at 513*; Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 218 (2013). Even if the ideas are "unpopular, annoying, or distasteful," the government cannot suppress them or force an individual to take another stance. *Murdock v. Pennsylvania*, 319 U.S. 105, 116 (1943). The Supreme Court, in *Speiser*,

emphasized the unconstitutionality of conditioning a requirement "upon engaging in specific speech," because it is essentially coercing the individual to engage in one speech and refrain from another. *Speiser*, 357 U.S. at 519. Furthermore, if the conditional governmental benefit impermissibly stifles speech, then it "is in effect [] penaliz[ing] them for such speech, and its deterrent effect is the same as if the state were to fine them for such speech." *Id.* at 518.

Here, after unsuccessfully trying to compel Dr. Nicholas to suppress his speech, the State penalized Dr. Nicholas by revoking the grant funding. Just as this Court in *Murdock* cautioned the government of the unconstitutionality of suppressing "unpopular" speech, here, the State explicitly revoked grant funding after there was negative press, embarrassed donors, and mockery on late night television. In turn, Dr. Nicholas lost access to "his salary, use of Observatory facilities and equipment, research assistant support, incidental costs associated with the scientific study, all costs associated with publication, and costs associated with a final summative monograph published by The University of Delmont Press." App. 18. Therefore, the State's coercive behavior attempting to compel Dr. Nicholas abandoning his beliefs and conforming to those of the State by revoking access and funding demonstrates the State's unconstitutional use of its power by penalizing Dr. Nicholas' beliefs, as this Court in *Speiser* warned.

A compelled contradiction may occur if the State forces individuals to express a view that contradicts their own beliefs. *FCC v. League of Women Voters of Cal.,* 468 U.S. 364-65 (1984) (highlighting where the court concluded that "compelled contradiction occurs when governmental restrictions force private entities to withhold views and information that they might wish to convey, contradicting their role as public information sources and denying their right to speak to chosen audiences."); *see also Agency for Int'l Dev. v. All. for Open Soc'y Int'l,*

Inc., 570 U.S. 205, 218 (2013) (noting that a grant recipient could not "avow the belief dictated by the Policy Requirement when spending Leadership Act funds, and then turn around and assert a contrary belief, or claim neutrality, when participating in activities on its own time and dime.").

Here, if Dr. Nicholas published under the Astrophysics Grant, in line with the State's requirements, and then published his findings on the connection between the Charged Universe Theory and the Pixelian Event, the result would be a compelled contradiction. Just as this Court in *League of Women Voters of Cal.* said forcing an individual to suppress their beliefs in order to convey what the government wants is compelled contradiction, here, the State has forced Dr. Nicholas to either forgo his beliefs and stay silent, or risk contradicting his own scholarly articles, which, of course, leaves his credibility up for questioning. Similarly, as this Court once again emphasized in *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, Dr. Nicholas cannot be asked to only publish conclusions that the State has accepted, and which are at odds with his own research.

C. The Astrophysics Grant Was Intended to Support Independent Scientific Research, Rather Than To Promote A Governmental Message

Although a government can control the content of its own message, its capacity to impose limitations on privately expressed speech is more constrained, even when government funded. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548 (2001). As held by this Court, "attorneys funded by a government entity are expected to advocate for their clients' interests and not serve the government agenda." *Id*. at 542. In this case, "the LSC program was designed to facilitate private speech, not to promote a governmental message." *Id*. at 548. Similarly in *Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819, 834 (1995), this Court determined that simply funding private speech does not transform it to governmental speech. Specifically, "if private speech could be passed off as government speech by simply funding speakers who align with

their ideology, it would have the power to effectively suppress any viewpoints they don't agree with." *Id*. at 841-43.

Here, the Astrophysics Grant was not for the purpose of using science to spread a political message. Just as attorneys, in *Velazquez*, are meant to provide for their clients, even if it might conflict with the government's goals, here, the Astrophysics Grant was meant to study a once-in-a-lifetime phenomenon through scientific avenues. The State went as far as conducting a competitive process of choosing which scientist would be responsible for conducting research based on their findings, not who would promote the State's message. As a private speaker, Dr. Nicholas did not need to, and should not, act as a mere conduit for the State's messages, as *Rosenberger* said. Further, just as this Court warned in *Rosenberger*, if the grant was a mere tool for choosing a speaker who aligned with the State's ideologies, then free speech would be, and is currently being, suppressed. The Astrophysics Grant was meant to encourage the study of the Pixelian Event, and that's what Dr. Nicholas did.

D. The Grant Condition Does Not Survive Strict Scrutiny And Subsequently Fails.

If a law is questioned on the basis of its constitutionality, it must survive the strict scrutiny standard in order for it to be upheld. *R. A. V. v. City of St. Paul*, 505 U.S. 377, 395 (1992) (finding that the ordinance was unconstitutional because it was not content-neutral and was underinclusive by targeting specific types of hate speech while ignoring others). To survive strict scrutiny, the law in question must be narrowly tailored to further a substantial government interest. *Id*.; *see also League of Women Voters of Cal.*, 468 U.S. at 364, *(*where the court found that a grant condition that prohibited editorializing did not pass strict scrutiny because it prohibited all forms of editorial comment regardless of whether they actually threatened the government's interest). Although the State is entitled to implement its value judgments upon how

public funds are to be distributed, it may only place conditions on the program itself, not the individual. *See Rust*, 500 U.S. at 193, 195-97. In addition, if speech is restricted, then it must be because there is an "actual problem" that requires solving and the restriction is a necessary step for redress. *United States v. Playboy Entertainment Group*, 529 U.S. 803, 822-23 (2000); *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799.

The State's restrictions on Dr. Nicholas' speech are not narrowly tailored, because the restrictions are both under and over inclusive. First, just as this Court found the ordinance in *City of St. Paul* to be underinclusive for targeting only specific types of hate speech, here, the State is only targeting the Charged Universe Theory, while in the past they have supported faculty from "referencing or relying upon the writing of other pagans, such as the Greeks, Romans, Incas, and Phoenicians." (R. at 10). Second, just as the conditional grant in *League of Women Voters of Cal.* was found to be overinclusive for prohibiting *all* forms of editorial comments, here, the grant conditions funding on if the scientific conclusions comport with only what the academy's consensus view of science is, therefore excluding all other views. Even though there is a large body of academic scholars from across the world whose scientific curiosities align with Dr. Nicholas, the State has deemed those to be unfit.

The State fails to meet their burden in showing that restricting Dr. Nicholas' speech would aid in solving the government interest of limiting public confusion between science and religion. As affirmed in *Rust*, the State is correct in asserting that it's within its power to be concerned with and address public confusion on science and religion, but it has provided no evidence to support its contention that Dr. Nicholas' findings would do such a thing. Further, the State continues to undermine its substantial interest by encouraging Dr. Nicholas to pursue his research and findings, but just not under the grant. As this Court in *Playboy Entertainment*

Group and *Brown* noted, the restriction of speech must be a necessary step to remedy the problem, but here, Dr. Nicholas' speech is not being restricted to further a significant governmental interest, because his findings would just be dispersed to the public by other means and add to confusion through a different channel. So, if the State's concern was really to not confuse the public, then it would make no difference where Dr. Nicholas publishes his findings.

Therefore, the State has failed to demonstrate that the restriction on publishing views outside of the academy's consensus of what is scientific, including the Charged Universe Theory, is narrowly tailored and would further their substantial government interest in clarifying public confusion between science and religion.

Accordingly, with respect to the First Amendment's Free Speech Clause, the state's requirement for grant recipients to conform their research and conclusions to the academy's consensus view would be unconstitutional. A state cannot impose an unconstitutional condition which forces individuals to adopt a specific ideology, that serves as compelled speech and compelled contradiction, aims to suppress dangerous ideas, and is not a governmental message. Therefore, the Court should reverse the Court of Appeal's judgment on both issues in favor of Cooper Nicholas.

II. DR. NICHOLAS' STATE-FUNDED RESEARCH DID NOT VIOLATE THE ESTABLISHMENT CLAUSE BECAUSE THE STATE FUNDS WERE FOR A NEUTRAL PURPOSE AND THE RELIGIOUS IMPLICATIONS WERE BASED ON DR. NICHOLAS' INDIVIDUAL CHOICE

The First Amendment states, "Congress shall make no law respecting an establishment of religion..." U.S. Const. Amend. 1. The Establishment Clause seeks to maintain the constitutional wall of separation between religious entities and the state, and notably, there is "play in the joints" between what the Establishment Clause permits, and the Free Exercise Clause compels. *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947); *Locke v. Davey*, 540 U.S. 712, 718 (2004). The two Clauses "are frequently in tension" and "often exert conflicting pressures" on state conduct. *Locke v. Davey*, 540 U.S. at712, 718; *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005).

The Establishment Clause was created to "protec[t] States, and by extension their citizens, from the imposition of an established religion by the Federal Government." *Zelman v. Simmons-Harris*, 536 U.S. 639, 678 (2002) (Thomas, J., concurring). Moreover, it prevents a State from creating laws with the "purpose" or "effect" of advancing or deterring religion. *Agostini v. Felton*, 521 U.S. 203, 222–23 (1997) ("[W]e continue to ask whether the government acted with the purpose of advancing or inhibiting religion [and] whether the aid has the 'effect' of advancing or inhibiting religion" (citations omitted)).

When analyzing whether an Establishment Clause violation occurred, courts must evaluate the history of the Establishment Clause to determine whether the circumstances produce a violation. "'[T]he line'" that courts and governments "must draw between the permissible and the impermissible" has to "'accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.'" *Town of Greece, N.Y. v. Galloway,* 572 U.S. 565, 577 (2014) (quoting *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 294 (1963) (Brennan, J., concurring)).

The Supreme Court has addressed whether the Establishment Clause allows the government to provide benefits to religious schools and students. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639, 644-45, 652, 663, (2002) (affirming a publicly funded school program that was neutral with respect to religion and provided funds to families who, by private choice, chose to enroll their children in private, public, secular, or religious schools); *Mitchell v. Helms*, 530 U.S. 793, 801, 829, 835, (2000) (upholding a program that allowed secular educational materials to be loaned to public and private schools based on neutral criteria); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 3,13–14 (1993) (allowing a school district to offer a public employee interpreter to a deaf student who attended a religious school).

A. Dr. Nicholas' Publication Was Primarily Scientific And Only Had Incidental Religious Implications

Courts have noted how the true separation of church and state is nearly impossible because of religion's overlap in a person's daily life. *See Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 669 (1970) (noting that the separation of church and state cannot mean an absence of all contact between). Due to the complexities of life, there will inevitably be ties between church and state. *Id.* at 676. Religion has always been closely identified within the United States history and government. *Sch. Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 212 (1963). As stated in *Engel v. Vitale*, "The history of man is inseparable from the history of religion." 370 U.S. 421, 43 (1962); *see also Zorach v. Clauson*, 343 U.S. 306, 313 (1952) ("[w]e are a religious people whose institutions presuppose a Supreme Being.").

Here, Dr. Nicholas' findings were not religious in nature, and any religious implications were merely incidental. His second publication in *Ad Astra* "relayed the standard data derived from the comet's travel—the phenomena associated with meteor showers and the changes in the comet that had occurred since its last recorded appearance nearly a century before." App. 6. On

top of the scientific observations, he added a historical dimension, highlighting that "atmospheric phenomena and electro-magnetic disturbances in the cosmic environment that he observed before, during, and immediately after the comet's appearance were consistent with the kinds of cosmic changes remarked upon for centuries in various cultures, but in particular those related to the Meso-American indigenous tribes in their ancient religious history." App. 6-7. He then predicted and suggested that the "occurrence demonstrated an interaction among electrical currents, filaments, atmospheres, and formations of matter that appeared consistent with the 'Charged Universe Theory.'" App. 7.

As such, based on his observations as studied and witnessed, he believed "the Meso-American hieroglyphs found on cave walls and rock facings were primitive descriptions of the same celestial array [he] witnessed in the Northern Hemisphere" and was "confident that the occurrence demonstrated an interaction among electrical currents, filaments, atmospheres, and formations that are consistent with Charged Universe Theory." Aff 56–57. Furthermore, Dr. Ashmore revealed that no available scientific data could refute Dr. Nicholas' findings. App. 8. And, although there was negative press on Dr. Nicholas' findings, the State places little recognition on the vast body of foreign astrophysicists who noted that Dr. Nicholas' research could be on the brink of a scientific breakthrough. Therefore, Dr. Nicholas abided by the grant's requirement that he conduct scientific research.

B. The Establishment Clause Is Not Implicated And Locke v. Davey Does Not Apply Because The Grant Was Neutral With Respect To Religion And Is Sufficiently Attenuated Based On Dr. Nicholas' Private Choices

Courts have emphasized that when aid is facially neutral with respect to religion but secondarily reaches religious areas due to the private choice of individuals, the Establishment

Clause is not implicated. *See Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020) ("[T]his Court has repeatedly upheld government programs that spend taxpayer funds on equal aid to religious observers and organizations, particularly when the link between government and religion is attenuated by private choices."). Courts have repeatedly rejected the notion that "any program which in some manner aids an institution with a religious affiliation" violates the Establishment Clause. *Mueller v. Allen*, 463 U.S. 388, 393 (1983); *see also Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) ("[W]here a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause."). In short, if there are religious implications, but these implications primarily attributable to the actions of the recipient, the Establishment Clause will not be triggered because the government's role ends with the disbursement of benefits. *Id.*

For example, in *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), the Supreme Court upheld a Washington program to provide vocational rehabilitation assistance grants to blind students who attended a Christian college with the purpose of becoming a pastor. This Court reasoned that the statute's purpose was "unmistakably secular," and the money was given directly to the student, who then used the funding to apply to an institution of their own choosing. *Id.* at 486, 488. Subsequently, "any aid provided under [the] program that ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid recipients." *Id.* at 488. This Court rationalized its decision by stating that any state funds that ultimately went to religious institutions did so "only as a result of the genuinely independent and private choices of" individuals. *Id.* at 487–89 ("[T]he

mere circumstance that petitioner has chosen to use neutrally available state aid to help pay for his religious education [does not] confer any message of state endorsement of religion.").

Similarly, in *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993), the Court held that providing an interpreter to a deaf student who attended a Catholic School pursuant to the Individuals With Disabilities Education Act (IDEA) did not violate the Establishment Clause because the benefits were neutrally applied to any child considered disabled under the IDEA. This Court noted that the aid only went to a religious institution due to the independent choices of recipients because "[d]isable[d] children, not sectarian schools, [were] the primary beneficiaries of the IDEA; to the extent sectarian schools benefit[ted] at all from the IDEA, they [were] only incidental beneficiaries. Thus, the function of the IDEA [was] hardly to provide desired financial support for nonpublic, sectarian institution." *Id.* at 13. As such, if the primary purpose of a state-funded program is not to promote religion, but instead to provide services "without regard to the 'sectarian-nonsectarian, or public-nonpublic nature'" of a program, the Establishment Clause cannot be violated. *Id.*

Meanwhile, in *Locke v. Davey*, 540 U.S. 712 (2004), the Court held that Washington State did not violate the Establishment Clause when a student who intended to major in pastoral ministries at a private Christian College had to forfeit a public scholarship fund because the grant outlined how the resources could not be used to obtain a degree in theology pursuant to Washington State Constitution's prohibition on funding religious instruction. The Court reasoned that Washington's interest against "funding religious instruction" to "prepare students for the ministry" provided a valid basis for excluding theology students from the scholarship program and did not violate their rights under the Free Exercise Clause. *Id.* at 719.

Notably, a long-held principle rests on the prohibition of using state funds to pay for the religious training of clergy. In fact, the *Locke* court emphasized the "historic and substantial state interest" against using "taxpayer funds to support church leaders." 540 U.S. at 722, 725. However, "it is clear that there is no 'historic and substantial' tradition against aiding [private religious] schools comparable to the tradition against state-supported clergy invoked by Locke." *Espinoza*, 140 S.Ct., at 2259. Instead, the *Locke* holding must be limited to exclude religious people from utilizing state benefits to specifically fund vocational religious degrees. *Cf. Carson v. Makin*, 142 S.Ct. 1987 (2022) (rejecting Locke's application because the *Locke* benefit excluded one specified use of scholarship funds: the "essentially religious endeavor" of obtaining a degree to "train[ ] a minister to lead a congregation" and the State had "merely chosen not to fund a distinct category of instruction.") (citing *Locke*, 540 U.S. at 721)

Here, the principal purpose of the grant was much like that of *Witters*, "unmistakably secular." Unlike *Locke*, where state funding would have been directly used to finance a vocational-religious degree and result in state-sponsored clergy, thereby triggering the Establishment Clause, the grant's goal was "to give the Principal Investigator the resources needed to draw conclusions based on observations and data gathered before, during, and after the Pixelian Event." App. 2. Similarly to the neutrally applied benefits given in *Zobrest* and *Witters*, here, Dr. Nicholas' approach to the Pixelian event was to collect data from a "scientific perspective" while being open to whatever the findings were. App. 8. Although Dr. Nicholas was motivated by the idea that this once-in-a-lifetime phenomenon would shine a light on his personal beliefs, his goal was to collect data on whether there were religious implications that followed. *Id.* Dr. Nicholas intended to use the funding to conduct the study first and use the study in his religious endeavor afterward, assuming his predictions aligned with his observations.

In addition to the purpose of the grant not being secular, Dr. Nicholas chose to use it to possibly further his endeavor of becoming a clergyman; hence, it was wholly the private choice of Dr. Nicholas, much like the recipient in *Witters*. *Locke* even stated, "Under our Establishment Clause precedent, the link between government funds and religious training is broken by the independent and private choice of recipients." 540 U.S. at 719. As such, the mere use of neutral funding to publish the observations, as required by the grant, coupled with Dr. Nicholas' own predictions involving religion, would not confer any message of state endorsement to a religion. Moreover, the fact that Dr. Nicholas *may* use the study, dependent on the findings, to further the goal of becoming a clergyman is a private choice, not fairly attributable to the state. Therefore, the Establishment Clause should not be implicated because, just as this Court said in *Zobrest* and *Witters*, the incidental religious implications of Dr. Nicholas' findings are the result of independent choices of an individual, not the function of the grant itself.

In addition, laws that "coerce" religious believers to choose between their religion or government public funds are inconsistent with the Constitution. For example, in *Trinity Lutheran*, 582 U.S. 449, 466 (2017), The Court found that the state "express[ly] discriminat[ed]" against a church when they were denied the opportunity to participate in a government aid program "solely because it is a church." This Court emphasized that the state violated the Establishment Clause because it put Trinity Lutheran to a choice: "to renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified." *Id.* at 466.

Here, much like *Trinity Lutheran*, who met all the criteria to qualify for a grant but was "deemed categorically ineligible to receive a grant" due to its religious character, Dr. Nicholas was a fully qualified recipient of the grant, but because his findings had incidental religious

implications, he was deemed ineligible. The State unconstitutionally put Dr. Nicholas to a choice in deciding whether to forgo funding or remove all remnants of any religious findings from his research in order to get his research published, as he intended to. Moreover, the State's actions indirectly force Dr. Nicholas to relinquish his goals of becoming a clergyman, despite his findings being groundbreaking and notably, that Dr. Ashmore and her colleagues could not disprove it.

In fact, excluding Dr. Nicholas' findings on the basis of its religious nature would violate the Establishment Clause. In *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020), this Court found Montana's "no-aid provision," which prevented religious schools from receiving subsidies that all private, non-religious schools were eligible for, merely because those schools were religious, violated the Establishment Clause. *Id.* at 2661. Once the State decides to subsidize private education, it may not then exclude some schools solely because they have a religious affiliation or purpose. *Id.* This Court found that the scholarship program was permissible under the Establishment Clause, and an intentional exclusion of religious schools violated the free exercise clause as well.

Here, the State may not ex post facto revoke grant funding on the basis that Dr. Nicholas' findings suggested a connection to the Charged Universe Theory. Just as *Espinoza* highlighted the unconstitutionality of disqualifying a qualified candidate from a state program solely on the basis of religion, here, the State may not use religion as the basis for disqualifying Dr. Nicholas' conclusions, especially when he complied with the requirements of the grant to report on the Pixelian Event.

As such, the state is not supporting the church but, instead, was providing funds for a scientific study, the conclusions of which might shed light on the religion's claim. Therefore, the findings are far too attenuated to raise an Establishment Clause concern.

C. Dr. Nicholas' Research Findings Could Not Be Viewed As An Endorsement Of Religion

This Court has long held that the traditional understanding of permitting private speech is not the same as coercing others to participate. See *Town of Greece*, 572 U.S. at 589.The Establishment Clause is not automatically triggered solely because a state actor "fail[s] to censor" private religious speech. *Kennedy v. Bremerton Sch. Dist*., 597 U.S. 507, 534–35 (2022). In fact, the relevant analysis of a challenged law is to determine whether it furthers any "evils" the Clause meant to protect, such as "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Comm'n of City of New York,* 397 U.S. 664, 668 (1970). Additionally, this Court has clearly established that the Establishment Clause does not include anything like a "modified heckler's veto, in which . . . religious activity can be proscribed" based on "'perceptions'" or "'discomfort.'" *Good News Club v. Milford Central School*, 533 U.S. 98, 119 (2001).

Here, it is highly unlikely that a reader of *Ad Astra* would conclude the State sponsored, endorsed, or was actively involved in Dr. Nicholas' religious findings because the publication included a disclaimer. Moreover, no reasonable reader could conclude that the government was attempting to coerce the reader to participate in the Meso-Pagan faith through Dr. Nicholas' publication.

In *Zorach v. Clauson*, 343 U.S. 306, 308, 311–312 (1952), for example, the court held that a public-school program permitting students to leave school and go to religious centers for devotional exercises was not impermissibly coercive under the Establishment Clause. The Court

reasoned that because students were not required to participate in the religious release or instruction and there was no evidence that any employee had "us[ed] their office to persuade or force students" to participate in religious activity, there could be no Establishment Clause violation. *Id.* at 311, and n. 6. Since nothing suggested that anyone encouraged or forced students to participate in the religious release and there was no formal school program accommodating the religious activity, the government provided a neutral space for those who wanted to participate and respect those who did not. *Id.* at 314 ("Government may not finance religious groups nor undertake religious instruction nor blend secular and sectarian education nor use secular institutions to force one or some religion on any person.").

Meanwhile, in *Lee v. Weisman*, 505 U.S. 577, 580 (1992), this Court held that school employees violated the Establishment Clause when a "clerical membe[r]" recited prayers "as part of [an] official school graduation ceremony" because the school had "in every practical sense compelled attendance and participation in" a "religious exercise." *See also Santa Fe Independent School Dist. v. Doe* 530 U.S. 290, 294, 311 (2000) (violating the Establishment Clause when they broadcasted a prayer "over the public address system" before school football games which required attendance for "cheerleaders, members of the band, and, of course, the team members themselves.").

Here, Dr. Nicholas' publication would not force anyone to participate in, endorse, or believe in the Charged Universe Theory. Much like the religious release in *Zorach*, here, *Ad Astra* functions as a mechanism to convey the findings Dr. Nicholas collected. It is not a tool that would promote the Charged Universe Theory on behalf of the State, and therefore, the State's involvement is neutral. Moreover, the *Ad Astra* publication disclaimer would serve to explicitly communicate the State's position on the Charged Universe Theory. Just as the government

program in *Zorach* neutrally allowed access to a space for worshipers and respected the decision of non-worshipers, here, the publication provides a space for healthy, scientific discourse to take place surrounding a phenomenon that has never been studied by modern-day astrophysicists alike. And, unlike *Lee*, where the government forced religious principles onto potentially unwilling participants, not only does Dr. Nicholas' findings put forth one observation of the Pixelian event, but any concerns the State might have had would be diminished by the disclaimer. Dr. Nicholas' work makes no affirmative claims that the Charged Universe Theory is correct, and nor do his findings force religion onto anyone. The conclusions drawn by Dr. Nicholas are in no way part of the State's broader goal of forcing religion onto people, especially when the publication is only one position on the Pixelian event and does not mandate any individual to read or disburse the article.

CERTIFICATE OF COMPLIANCE

Following the requirements of the Seigenthaler-Sutherland Moot Court Competition, we, Counsel for Petitioner, certify that:

1. The work product contained in all copies of our team's brief is in fact the work product of the team members;

2. Our team has complied fully with our law school's governing honor code; and

3. Our team acknowledges that we have complied with all Competition Rules.

Team 25
Counsel for Petitioner