

No. 23-CV-1981

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IN THE  
SUPREME COURT OF THE UNITED STATES OF AMERICA  
January Term 2024

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**COOPER NICHOLAS,**

*Petitioner,*

v.

**STATE OF DELMONT and  
DELMONT UNIVERSITY,**

*Respondent.*

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*On Writ of Certiorari to the United States  
Court Of Appeals for the Fifteenth Circuit*

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**BRIEF FOR PETITIONER**

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Team 31  
*Counsel for Petitioner*  
January 31, 2024

## **QUESTIONS PRESENTED**

1. Did the University place an unconstitutional condition on Dr. Nicholas' First Amendment right to free speech when it revoked funding under the Astrophysics Grant after Dr. Nicholas would not conform his scientific observations remarking on the similarities between the Pixelian Event and Meso-Pagan ideology to conform to the academy's consensus view of a scientific study?
2. Did the University violate the Establishment Clause when it provided funding to Dr. Nicholas, who expressed that his religious beliefs were consistent with his research of the Pixelian Event?

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## **STATEMENT OF JURISDICTION**

The United States District Court for the District of Delmont had proper subject matter jurisdiction pursuant to 28 U.S.C. § 1331. On appeal, the United States Court of Appeals for the Fifteenth Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291.

Following the decision of the Court of Appeals for the Fifteenth Circuit, Petitioner filed for writ of certiorari, which this Court granted. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and has appellate jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **STATEMENT OF THE CASE**

### **I. STATEMENT OF FACTS**

#### **A. Dr. Nicholas and Meso-Pagan Ideology**

Dr. Cooper Nicholas (hereinafter “Dr. Nicholas”) is a 33-year-old native of Delmont City in the state of Delmont (hereinafter “State”), U.S.A. R. at 3. He is an active participant of the Meso-Pagan religion, which uses celestial phenomena to understand the “lifeforce”—a tenant of Meso-Paganism that connects the universe with living creatures and plants. R. at 4, 9, 56.

Dr. Nicholas’ religion is the driving force behind his success as an astrophysicist. R. at 4, 56. He graduated from Delmont University (hereinafter “University”) with joint degrees in astronomy and physics. R. at 2, 3, 55. He also earned his Ph.D. in astrophysics from the University of California, Berkeley. *Id.* He has received academic appointments, visitorships, and post-doctoral grants in America and abroad and has authored a leading treatise on observational astrophysics. R. at 3, 55. He is also a scholar in residence at the Ptolemy Foundation, an independent scientific research institute. R. at 2, 3, 5. Dr. Nicholas believes his expertise in astrophysics will earn him the position of a First Order Sage in his religious community. R. at 57.

Sages are the leaders of the Meso-Pagan faith and are categorized into three tiers with the First Order Sage being the lowest level. Sages study the stars, the relationships among planets and

other celestial objects, and the significance of inter-planetary and celestial events. R. at 4, 56, 57. They also regard ancient hieroglyphs of Meso-American indigenous tribes as visual accounts of celestial phenomena that depict the lifeforce. R. at 4, 56. Members that are interested in becoming a Sage must complete a year-long defense of an approved scholarly work on the lifeforce to be considered. R. at 57.

### **B. The Astrophysics Grant**

In 2020, the University opened its GeoPlanus Observatory (hereinafter “Observatory”) with the hopes that it will become one of the foremost centers for celestial study. R. at 4, 5, 52. To advance this goal, the State created the Visitorship for the specific purpose of studying the rare Pixelian Event. R. at 1, 5. The Astrophysics Grant was approved by the State and administered by the University to provide funds for a Principal Investigator. R. at 1, 4, 5. The Principal Investigator was to receive a salary, use of the Observatory, funding for research assistants, and incidental costs associated with the scientific study of the Pixelian Event. R. at 1, 5, 10. The grant also included all costs associated with the publication of scientific, peer-reviewed articles related to the Pixelian Event, the publication of a final summative monograph in the University’s Delmont Press, and the creation of a public dataset that will include the collected data. R. at 2, 5.

The University awarded the Astrophysics Grant to Dr. Nicholas in 2021 for his eminence in the field and his reputation as a wunderkind with intuitive, often ground-shifting observations. R. 5, 53. He was contracted to perform under the Astrophysics Grant from March 2022 to March 2024, and during that time, he was required to conform his scientific conclusions to the academic community’s consensus view of a scientific study. R. at 5. Dr. Nicholas took a leave of absence from the Ptolemy Foundation and moved to Delmont to undertake this project. R. at 3, 5.



### C. *Ad Astra* and Public Criticism

For the first nine months of the Visitorship, Dr. Nicholas studied the celestial environment before, during, and after the Pixelian Event. R. at 6. He published articles and offered his cosmic measurements in the premiere peer-reviewed journal, *Ad Astra*. R. at 6. In one article, he concluded that peculiar wavelength changes in the spectral array signaled something momentous was occurring in the galaxy prior to the Pixelian Event. *Id.* These findings were a hot topic at conferences, and they generated a variety of response papers from top scientists. *Id.*

Six months later, Dr. Nicholas sought to publish more data in *Ad Astra* of the comet's travel. R. at 6. He noted that the atmospheric phenomena and electro-magnetic disturbances in the cosmic environment were consistent with accounts of various ancient cultures, including ancient Meso-American indigenous tribes. *Id.* He believed that the ancient hieroglyphs of these tribes may have been primitive depictions of the Pixelian Event. R. at 7, 56. These depictions also appeared to memorialize the same kind of electrical interplay that is the foundation for the life force. R. at 7, 57. Dr. Nicholas also suggested that his observations showed an interaction among electrical currents, filaments, atmospheres, and formations of matter that are consistent with the Charged Universe Theory. *Id.*

The editor of *Ad Astra*, Dr. Ashmore, spoke with Dr. Nicholas about his controversial findings. R. at 7. The Charged Universe Theory suggests that cosmological phenomena are dependent upon charged particles instead of gravity. R. at 7. The theory is supported by ancient depictions of violently charged electrical displays, like the Aurora Borealis. *Id.* Dr. Ashmore explained to Dr. Nicholas that although his article is groundbreaking and that she and her colleagues could not disprove it, she was not going to publish his theory without a qualification. R. at 8. The qualification stated that Dr. Nicholas' article did not have the endorsement of the

publication, its editors, or staff, and that the editorial board was concerned that the archeological and Meso-Pagan references were religious in nature, not empirical. *Id.*

#### **D. Dr. Nicholas' Termination**

The article received public criticism. R. at 9. Though astrophysicists in Meso-America, Australia, and Europe believed Dr. Nicholas was on to something big, the American academic community discredited the article for being unprovable and medieval in its reference to ancient cultures. *Id.*

On January 3, 2024, University President Seawall wrote to Dr. Nicholas demanding he conform his scientific conclusions to the academy's consensus view of a scientific study or else the Astrophysics Grant would be revoked. R. at 10. Dr. Nicholas urged the University that any attempt to censor his research defied the meaning and nature of science. *Id.* President Seawall was aware of Dr. Nicholas's religion from social media and his intentions to become a Sage. R. at 54. She explained to Dr. Nicholas that the University did not want to be perceived as endorsing a religion. R. at 10, 11. Dr. Nicholas insisted that there was nothing unscientific about his study, and that he knew the University had published articles concerning other pagans, such as the Greeks, Romans, Incas, and Phoenicians. R. at 10, 58. He reminded President Seawall that revoking the Astrophysics Grant would compromise his research and risk the loss of the data forever. R. at 11.

President Seawall gave the ultimatum to Dr. Nicholas again and he refused to express a different viewpoint in his scientific study. *Id.* As a result, just two months before the Astrophysics Grant was contractually scheduled to end, Dr. Nicholas was denied admittance into the Observatory. *Id.* The University issued a press release explaining that its decision to let Dr. Nicholas was over a fundamental disagreement over the meaning of science, and that it could not further the public's confusion of science and religion. *Id.*

## II. PROCEDURAL HISTORY

Dr. Nicholas filed a motion for summary judgment and requested permanent injunctive relief and reinstatement of the Astrophysics Grant, including the salary, research assistant funds, and access to the Observatory. R. at 2.

The district court granted summary judgment in favor of Dr. Nicholas. R. at 3. It held that as a private speaker, the University could not compel Dr. Nicholas to speak its preferred viewpoint, nor could it deny Dr. Nicholas funds for refusing to conform to the academy's consensus view of a scientific study. R. at 14-15. As a result, the University's denial of the Astrophysics Grant violated Dr. Nicholas' First Amendment right to free speech. R. at 19-20. Additionally, the court held that the University did not violate Dr. Nicholas's Free Exercise rights by merely funding a religiously affiliated person. R. at 26-27. However, the University did violate the Free Exercise Clause of the First Amendment when it discriminated against Dr. Nicholas on account of his religion to avoid an Establishment Clause violation. R. at 27-28.

The Fifteenth Circuit Court of Appeals reversed. R. at 32. Under *de novo* review, it held that the University may engage in selective funding without engaging in viewpoint discrimination. R. at 34. Therefore, the University's refusal to fund speech that did not conform to its desired message does not suppress, coerce, or discriminate against Dr. Nicholas's speech. R. at 37, 39. Additionally, the court held that the University did not violate the Establishment Clause when it refused to fund Dr. Nicholas who used his position to study a religion. R. at 46. The University exercised rightful discretion in determining what actions unconstitutionally fund religion. R. at 50. The court did not address the Free Exercise Clause claim because it was not raised on appeal. *Id.*

## SUMMARY OF THE ARGUMENT

**The funding condition under the Astrophysics Grant permits the University to compel Dr. Nicholas to espouse a viewpoint that the University cannot otherwise lawfully require.** By not defining “scientific” within the Astrophysics Grant, the University is free to interpret any criticism of Dr. Nicholas’ publications as an indication that it does not conform to the academic community’s consensus view of a scientific study. Even though Dr. Nicholas is a private speaker, and the Astrophysics Grant facilitates private speech, the University seeks to use this funding condition to compel Dr. Nicholas’ to espouse a viewpoint he vehemently opposes. As a result, the condition on the Astrophysics Grant unconstitutionally burdens Dr. Nicholas’ First Amendment right to free speech.

**The funding condition seeks to leverage the University’s authority to regulate speech outside the contours of the Astrophysics Grant itself, which results in an unconstitutional burden on Dr. Nicholas’ First Amendment right to free speech.** The University justifies its decision to strip Dr. Nicholas of the Astrophysics Grant by claiming that it was to prevent the public’s confusion of science and religion. However, this Court only upholds such justifications when the objective is clearly to suppress an evil thought to be sufficiently grave, which the University fails to identify. Therefore, the University has no basis for its rationale, let alone a compelling interest to justify the restriction on Dr. Nicholas’ speech.

**The funding condition seeks to control speech in the university setting, which is restricted under the vagueness and overbreadth doctrines of the First Amendment.** Universities are a traditional sphere of free expression that are fundamental to our society. Any funding condition that gives power to the University to approve publications that are based on some ultimate idea and that chill individual thought and expression are strictly scrutinized. The

University's condition on the Astrophysics Grant fails to pass this analysis, and it also fails under the vagueness and overbreadth doctrines of the First Amendment.

**The Astrophysics Grant did not violate the Establishment Clause when it was awarded to Dr. Nicholas, whose religious convictions align with the research performed.**

Government funds awarded to individuals for secular purposes do not promote or establish religion, regardless of the individual's religious convictions. The Astrophysics Grant serves a secular purpose, and it was awarded to Dr. Nicholas because of his qualifications. Dr. Nicholas' religious affiliation was not considered in the University's selection.

**The University violated Dr. Nicholas' free exercise when it denied him the Astrophysics Grant solely on the basis of his religion.** When an individual is qualified to receive government funding but is denied such funding solely because of his religion, the government discriminates on the basis of religion. Dr. Nicholas was qualified to receive the Astrophysics Grant and performed his duties consistent with its provisions. Yet the University revoked the Astrophysics Grant once Dr. Nicholas expressed his religious convictions.

**The University's actions fail both the neutral and generally applicable test, as applied to Establishment Clause violations, and strict scrutiny, as applied to Free Exercise Clause violations.** The University's actions are not neutral or generally applicable because the University targeted Dr. Nicholas for his religious beliefs. Although the State generally has a compelling interest in avoiding the establishment of religion, its means of achieving that interest were not narrowly tailored because it violated Dr. Nicholas's free exercise.

## ARGUMENT

*“If there is any fixed star in our constitutional constellation, it is 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.”<sup>1</sup>*

### **I. DR. NICHOLAS IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF AGAINST THE STATE OF DELMONT AND DELMONT UNIVERSITY AND SHOULD BE IMMEDIATELY REINSTATED UNDER THE GRANT BECAUSE THE UNIVERSITY’S FUNDING CONDITION IMPOSES AN UNCONSTITUTIONAL CONDITION ON HIS FIRST AMENDMENT RIGHT TO FREE SPEECH.**

It is well-settled that “[w]hen we deal with the complex strands in the web of freedoms which make up free speech, the operation and effect of the method by which speech is sought to be restrained must be subjected to close analysis and critical judgment . . .” *Speiser v. Randall*, 357 U.S. 513, 520 (1958). Over time, this Court has adopted a series of doctrines to determine when a government funding condition results in an unconstitutional infringement on an individual’s First Amendment right to free speech. These doctrines, which have taken names and small frameworks of their own, are used by this Court interchangeably, in tandem, juxtaposed, or as a balancing test. See Heather Blakeman, *Speech-Conditioned Funding and the First Amendment: New Standard, Old Doctrine, Little Impact*, 13 Nw. J. Int’l Hum. Rts. 27, 34-37 (2015). In essence, the *ad hoc* application of what has become familiarly known as the unconstitutional conditions doctrine has only recently matured into a more graspable framework in this Court’s 2013 decision, *Agency for International Development v. Alliable for Open Society International, Inc.*, 570 U.S. 205 (2013). *Id.* at 37. For this reason, the discussion below follows this Court’s two-part analysis in *Agency for Int’l Dev.*, which draws on principles and considerations of the unconstitutional conditions doctrines.

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<sup>1</sup> *W. Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

**A. The University’s Funding Requirement Violates Dr. Nicholas’ First Amendment Right To Free Speech By Compelling, As A Condition Of Funding, His Affirmation Of The University’s Preferred Message.**

The Astrophysics Grant requires “that the study of the [Pixelian] Event and the derivation of subsequent conclusions conform to the academic community’s consensus view of a scientific study.” Record 5. At the outset, the condition on the grant was enacted or designed as a direct regulation of speech. *Agency for Int’l Dev.*, 570 U.S. at 213. (“Were [the condition] enacted as a direct regulation of speech, [it] would plainly violate the First Amendment.”) The condition was also a convenient weapon for the University to directly regulate Dr. Nicholas’ speech or deny the funds because of its broad and subjective nature. Simply, the condition on the grant could take on a new meaning at the University’s convenience, and it did.

This is unlike the condition on funding in *Rust v. Sullivan*. 500 U.S. 173 (1991). There, the Secretary of Health and Human Services refined §1008 of the Public Health Service Act to not only exclude federal funds “used in programs where abortion is a method of family planning,” but to also exclude those funds from Title X projects that “engag[e] in counseling concerning, referrals for, and activities advocating abortion as a method of family planning.” *Id.* The condition on the grant was designed to offer “clear and operational guidance” to its grantees. *Id.* at 179. In fact, this Court identifies the grant’s conditions, their practical application, and Congress’ intent for each condition by referring to plain meaning, legislative history, and the Secretary’s interpretation. *Id.* at 178-189. This Court upheld the funding condition in large part for its specificity. It was clear that from the start, Congress intended to “declin[e] to ‘promote or encourage abortion,’” *Id.* at 193, and for the “public funds [to] be spent for the purposes for which they were authorized.” *Id.* at 196.

Here, the University’s funding condition is not nearly as specific as the condition in *Rust*. The conditional language in the Astrophysics Grant demands Dr. Nicholas conform his scientific

studies and conclusions about the Pixelian Event “to the academic community’s consensus view of a scientific study.” Record 5. Yet there is no language to indicate what kind of scientific study *is* consistent with the academic community’s consensus view of a scientific study. It was only after Dr. Nicholas published his study that University President Seawall narrowed the scope of the condition. *Id.* at 10. In fact, the genericness of the Astrophysics Grant, coupled with the weight the University placed on Dr. Nicholas’ expertise and the amount of independence and trust it provided him, strongly indicates that the University was providing Dr. Nicholas a platform for his research instead of seeking to publish its own message.

The record indicates that the University awarded Dr. Nicholas the Astrophysics Grant due to “his eminence in the field and his reputation as a wunderkind with intuitive, often ground-shifting observations.” *Id.* at 3, 5. Dr. Nicholas has joint degrees in astronomy and physics, a doctorate in astrophysics, and committed his life to the study of astrophysics through “academic appointments, visitorships, and post-doctoral grants both in America and abroad.” *Id.* at 3. He also authored a leading treatise on observational astrophysics, which was the focus of the Astrophysics Grant. *Id.* He was the perfect candidate to study the Pixelian Event, which the University hoped would promote its new Observatory as “one of the foremost centers for celestial study in the world.” *Id.* at 4, 5. The University provided Dr. Nicholas with funding and access to resources necessary to study the Pixelian Event, such as “a salary, use of Observatory facilities and equipment, funding of research assistances,” and “all costs associated with the publication of scientific, peer-reviewed articles related to that event.” *Id.* at 5. The generous terms of the grant were not coupled with any language limiting Dr. Nicholas’ authority.

It appears the University provided Dr. Nicholas with a platform under a reasonable interpretation of the Astrophysics Grant. There is no language in the record to indicate that the



University sought to publish a particular message “to encourage certain activities it believes to be in the public interest,” when it established the grant. *Rust*, 500 U.S. at 193. Instead, the facts are more akin to “[a] situation in which the Government place[s] a condition on the *recipient* of the subsidy rather than on a particular program . . .” *Id.* at 197 (emphasis added and omitted). Such instances make up the body of caselaw under “unconstitutional conditions” and are surveyed with a critical eye by this Court. *Id.* For example, in *Legal Services Corp. v. Velazquez*, Congress provided funding to lawyers as part of a program to assist indigent welfare recipients in claiming their benefits. 531 U.S. 533, 539 (2001). However, receipt of the funds expressly barred the attorney from raising challenges to the government’s existing welfare laws. *Id.* As a result, this Court found the funding condition to be an unconstitutional condition on speech because the lawyer was a private speaker, not a government speaker. *Id.* at 542. Here, the Astrophysics Grant is designed to *facilitate* private speech, yet the University’s condition on the grant expressly aims to *control* Dr. Nicholas’ speech.

The University may not “regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of U. of Virginia*, 515 U.S. 819, 829 (1995) (quoting *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 46 (1983)) (internal citations omitted). However, in this case, the University regulates Dr. Nicholas’s speech solely on the basis of his viewpoint. When Dr. Ashmore refused to publish Dr. Nicholas’ scientific conclusions in *Ad Astra* without the study first prefaced with a qualification, it was because of the *content*, or the expressed viewpoint, of the study. Record 8. Dr. Ashmore did not want *Ad Astra* to be seen as “endorsing [an] extreme view.” *Id.* She admitted that Dr. Nicholas’ conclusions about the Charged Universe Theory “were groundbreaking,” and that she and her colleagues “certainly could not disprove it,” yet Dr.

Nicholas’ “*interpretation[s]* of his observations did not have the endorsement of the publication, its editors, or staff.” *Id.* (emphasis added). Resultingly, the University interpreted *Ad Astra*’s rejection of the *content* of Dr. Nicholas’ study as an indication that his study was not scientific. *Id.* at 10. The University subsequently used the condition on the Astrophysics Grant to demand Dr. Nicholas revise his scientific conclusions to express a different viewpoint.

The University offends a private speaker’s First Amendment when it participates in viewpoint discrimination. *Rosenberger*, 515 U.S. at 828 (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.”) This is especially true when the University “imposes financial burdens on certain speakers based on the content of their expression.” *Id.* Here, the University gave Dr. Nicholas an ultimatum after *Ad Astra* rejected his scientific conclusions because of his expressed viewpoint about the Charged Universe Theory. The University demanded that Dr. Nicholas either express a different viewpoint or give up the Astrophysics Grant. Record 11. Yet this Court has time and time again held that “the government may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.” *Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.*, 547 U.S. 47, 59 (2006) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)). As a result, the University cannot deny the Astrophysics Grant from Dr. Nicholas because he refuses to espouse a different viewpoint.

This Court’s analysis in *Rumsfeld* affirms this conclusion. In *Rumsfeld*, this Court found that a funding condition could not demand a result by a private speaker that the government could not otherwise lawfully require under the First Amendment. *Rumsfeld*, 547 U.S. at 59-60. Under this rule, this Court upheld a funding condition “directly requir[ing] universities to provide military recruiters equal access to its students.” *Id.* at 59. Since “[t]he [funding condition] neither limits

what [universities] may say nor requires them to say anything,” Congress was not placing an “unconstitutional condition on the receipt of federal funds.” *Id.* at 60. Here, however, the University uses the Astrophysics Grant to demand action by Dr. Nicholas that it otherwise could not lawfully require under the First Amendment. By threatening the denial of funds, the University gave Dr. Nicholas no other choice but to express a viewpoint he vehemently opposes. Record 10. (“Dr. Nicholas responded . . . that he would not be told what to conclude or upon what his observations might rest.”) This is a textbook example of a financial burden imposed on a speaker based on the content of his speech. *Rosenberger*, 515 U.S. at 828.

Just two months before the Astrophysics Grant was contractually scheduled to conclude, the University “changed the security protocol so that Dr. Nicholas was denied admittance” into the Observatory. Record 11. Dr. Nicholas’ salary, his use of the Observatory facilities and equipment, his funding for research assistants, and his access to the University’s libraries was revoked. *Id.* Dr. Nicholas had committed approximately two years as the Visitorship’s Principal Investigator and led the “Observatory’s efforts to develop and conduct a variety of widely accepted parameters for measuring the celestial environment” before, during, and after the Pixelian Event. *Id.* at 6. He published a series of cosmic measurements and articles in *Ad Astra*, and his findings “were a hot topic . . . and generated a variety of response papers from top scientists.” *Id.* Dr. Nicholas even took a leave of absence from the Ptolemy Foundation and relocated to Delmont under the auspices of the Astrophysics Grant. *Id.* at 5-6. For the University to deny the Astrophysics Grant now, “at a time just prior to [Dr. Nicholas’] post-Event data analysis,” would “compromise his entire project and risk the loss of the data forever.” *Id.*

The University was not blind to the harsh realities for Dr. Nicholas. President Seawall wrote to Dr. Nicholas thrice to remind him that if he did not “agree[] to limit [his] research

experiments and conclusions to those comporting with the language of the [ ] grant,” he would lose his funding. *Id.* at 10, 11. Dr. Nicholas also wrote to President Seawall thrice urging her that “there was nothing unscientific in what he was concluding.” *Id.* at 11. (“Nicholas immediately emailed a reply stating that his study and conclusions were scientific and that the school should recognize them as such.”) He even reminded President Seawall that “any attempt by the Observatory to censor his research and its consequent conclusions . . . went against everything upon which and for which science stood.” *Id.* at 10. But despite Dr. Nicholas’ pleadings, the University was unsatisfied that he did not conform his scientific conclusions to espouse a different viewpoint. *Id.* As a result, it stripped Dr. Nicholas of the Astrophysics Grant just two months before he was scheduled to finish. *Id.* at 11.

The vague and subjective condition on the Astrophysics Grant conveniently permits the University to compel Dr. Nicholas to espouse a viewpoint that the University could not lawfully achieve under the First Amendment. Since “scientific” is not defined by the University or the academy, there is nothing to stop the University from interpreting *any* criticism of other astrophysicists, universities, publications, or others of the like, as an indication that Dr. Nicholas’ publication does not conform to the academy’s consensus view of a scientific study. In fact, this Court has explicitly struck down such funding schemes. In *Agency for Int’l Dev.*, this Court wrote that although “[t]he line is hardly clear, in part because the definition of a particular program can always be manipulated to subsume the challenged condition, . . . Congress cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.” 570 U.S. at 215; *see also Velazquez*, 531 U.S. at 547. As a result, the condition on the Astrophysics Grant unconstitutionally burdens Dr. Nicholas’ First Amendment right to free speech.

It is for this reason, including the outrageous timing of the University's denial of the Astrophysics Grant and Dr. Nicholas' devotion to his research on the Pixelian Event, that the proper recourse is not for Dr. Nicholas to deny the funds, but for the University to reinstate Dr. Nicholas. While "the recourse for a party objecting to a condition on the receipt of federal funding is simply to decline the funds, *Agency for Int'l Dev.*, 570 U.S. at 206; the recourse is not a cure to a funding condition that unconstitutionally burdens First Amendment rights." Record 20. Since the condition on the Astrophysics Grant unconstitutionally burdens Dr. Nicholas' First Amendment right to free speech, he is not expected to decline the funding.

**B. The University's Funding Condition Seeks To Leverage The University's Authority To Regulate Speech Outside The Contours Of The Grant Itself, Which Results In An Unconstitutional Burden On Dr. Nicholas' First Amendment Right To Free Speech.**

The University stripped Dr. Nicholas of the Astrophysics Grant after he refused to espouse a viewpoint that went "against everything upon which and for which science stood." Record 10. In a press release, President Seawall explained that the University's decision to let Dr. Nicholas go was to prevent the public's "confusion of science and religion." *Id.* at 11. In other words, because Dr. Nicholas refused to manipulate his scientific conclusions to support a different scientific theory, and because his scientific conclusions were intertwined with religious ideology and history, the University believed it was its prerogative, and in the public's best interest, that Dr. Nicholas be removed. This Court has previously addressed this method of stifling private speech to achieve a government objective and has sought to prevent such abuse. Here, when the University demanded that Dr. Nicholas adopt and espouse, as his own, a viewpoint that prevented the confusion of science and religion, it was controlling Dr. Nicholas' protected speech outside the scope of Astrophysics Grant. *See Agency for Int'l Dev.*, 570 U.S. at 206.

The University parallels the intentions of other unconstitutional funding schemes that are aimed at the suppression of dangerous ideas. For example, in *Speiser*, honorably discharged veterans of WWII were required to sign a loyalty oath promising not to “overthrow the Government of the United States or the State of California” to claim a property tax exemption. 357 U.S. at 515. The State of California argued that veterans hold a position of special trust and influence in the community, so they present a special danger to the State if they engage in the proscribed advocacy in the statute. *Id.* at 528. The State relied on *Garner v. Bd. of Pub. Works of City of Los Angeles*, 341 U.S. 716 (1951), *Gerende v. Bd. of Sup’rs of Elections of Baltimore City*, 341 U.S. 56 (1951), and *Am. Commun. Assn., C.I.O. v. Douds*, 339 U.S. 990 (1950). In all three cases, “there was no attempt directly to control speech but rather to protect, from an evil shown to be grave, some interest clearly within the sphere of governmental concern.” *Speiser*, 357 U.S. at 527. In *Speiser*, however, California’s loyalty oath not only sought to directly control veterans’ speech, but it also failed to identify the “sufficiently grave” evil that justified the restriction on speech. *Id.* at 527-29 (“The State clearly has no such compelling interest at stake as to justify a short-cut procedure which must inevitably result in suppressing protected speech.”)

The University’s justification for stripping Dr. Nicholas of the Astrophysics Grant is even more baseless than the State of California’s attempt to silence veterans. At no time has the Astrophysics Grant ever provided that the reason for the condition was to prevent “public confusion between religion and science.” Record 53. In fact, the University’s concern appeared for the first time in a press release after Dr. Nicholas was removed from his position. *Id.* at 11. Further, the University never explained what “confusion between religion and science” meant until President Seawall submitted an affidavit pending litigation. *Id.* at 53. At no point does the University provide language indicating that the public’s confusion between science and religion is

an “evil . . . thought [to be] sufficiently grave.” *Speiser*, 357 U.S. at 527. Therefore, this Court cannot find that the University had a basis for trying to prevent the public’s confusion of science and religion, let alone a compelling interest to justify the restriction on Dr. Nicholas’ speech.

**C. Since The University’s Funding Condition Controls Speech In The University Setting, Which Is A Traditional Sphere Of Free Expression That Is Fundamental To The Functioning Of Our Society, It Is Restricted Under The Vagueness And Overbreadth Doctrines Of The First Amendment And Cannot Survive.**

The Astrophysics Grant was established by the State to fund the University’s world-class Observatory for the rare Pixel Event. Record 1. Under the terms of the Astrophysics Grant, Dr. Nicholas had full access to Observatory facilities and equipment and the opportunity to publish a final summative monograph of his observations in the University’s Delmont Press. *Id.* at 5. Though the Astrophysics Grant is state funded, it operates under the auspices of the University. As a result, the same concerns this Court has for universities and institutions of higher learning apply here. In *Rust*, this Court wrote:

[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment.

500 U.S. at 200; *Keyishian v. Bd. of Regents of U. of State of N.Y.*, 385 U.S. 589 (1967).

Here, the funding condition fails to pass the vagueness and overbreadth doctrines of the First Amendment. *Keyishian*, 385 U.S. at 604 (“Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.”). The district court was correct when it found the restriction on speech to “broadly exclud[e] any views that do not comport with the academy’s consensus view as to what is ‘scientific.’” Record 16. It also found that the condition excludes scientific conclusions under the Charged Universe Theory yet allows them to be published elsewhere. *Id.* The court noted that if the University’s goal

was really to prevent the confusion between science and religion, it would oppose the publication of Dr. Nicholas' findings elsewhere, yet it did not. *Id.* Further, the University allows publications using ideologies of other pagans, such as the "Greeks, Romans, Incas, and Phoenicians," but it singles out Dr. Nicholas' theories involving Meso-American beliefs. *Id.* at 16, 58. As a result, the University is *contributing* to its supposed goal to prevent public confusion between science and religion. From this, it is clear the funding condition only singles out Dr. Nicholas' speech instead of addressing a public concern.

This Court must be particularly weary of two dangers when reviewing the funding condition: the State's authority to approve publications that are "based on some ultimate idea" and the "chilling of individual thought and expression." *Rosenberger*, 515 U.S. at 835. This Court noted that these concerns are "especially real in the [u]niversity setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophical tradition." *Id.* Here, the University's refusal to publish Dr. Nicholas' scientific study in the Delmont Press, let alone allow Dr. Nicholas to finish the last two months of the Astrophysics Grant, stifles speech, precludes the free flow of knowledge, and chills alternative theories about our world. It uses a broad term like "science" to exclude a viewpoint that it does not like. For this reason, and for all the reasons expressed above, the funding condition is unconstitutional.

## **II. THE ESTABLISHMENT CLAUSE IS NOT VIOLATED WHEN A STATE-FUNDED GRANT IS AWARDED TO RELIGIOUSLY AFFILIATED PERSONS FOR SECULAR PURPOSES.**

The First Amendment states "that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017); citing U.S. Const. Amend. 1. Providing mere funding to persons or organizations that have religious affiliation is not in and of itself a violation of the Establishment



Clause. *Id.*; *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407 (2022). However, when the government treats one entity differently from another, even with the purpose of avoiding an Establishment Clause violation, it engages in religion-based discrimination and violates the Free Exercise Clause. *Id.* Discrimination on the basis of religion is subject to the highest form of scrutiny. *Kennedy*, 142 S. Ct. at 2422; citing *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993).

Here, the University selected Dr. Nicholas to receive the Astrophysics Grant. Record 5. It revoked the Astrophysics Grant for fear of violating the Establishment Clause when it learned of Dr. Nicholas' religion and his desire to use his research to further his religious beliefs. Record 11. In doing so, the University discriminated against Dr. Nicholas on the basis of his religion and violated the Free Exercise Clause. Accordingly, the University's actions fail strict scrutiny.

**A. The Astrophysics Grant Does Not Fund, Promote, Or In Any Manner Aid In The Establishment Of Religion.**

Government funding to religious persons or organizations does not violate the Establishment Clause when the purpose of the funds does not establish or touch any religion. *See Trinity Lutheran.*, 582 U.S. 449 (2017). “[A] benefit program under which private citizens ‘direct government aid to religious [organizations] wholly as a result of their own genuine and independent private choice’ does not offend the Establishment Clause.” *Carson v. Makin*, 142 S. Ct. 1987, 1994 (2022) (citing *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002)). The Astrophysics Grant awarded to Dr. Nicholas is devoted to the exploration and research of the Pixelian Event. Record 5. Its purpose does not establish nor encroach on any particular religion. The process for selecting Dr. Nicholas to receive the Astrophysics Grant was also completely independent of his religious preferences. Record 53. Any connection to religion is at Dr. Nicholas' own independent choice, separate from the funds received by the University for his research.

**1. The Astrophysics Grant is a secular grant created for scientific research and exploration.**

The Astrophysics Grant was approved for the purpose of researching the Pixelian Event. Record 5. It provided the “Principal Investigator” with use of the University’s state-of-the-art Observatory, a salary, research assistants, and any other incidental costs incurred during the research. *Id.* at 1-2. “[T]he 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.” *Id.* at 2.

**2. Mere funding to religious persons or organizations for secular purposes is insufficient to violate the Establishment Clause.**

The Establishment Clause does not prohibit the government from funding religious organizations when it merely treats those organizations as it would any other secular group. *See Trinity Lutheran*, 582 U.S. 449 (2017). In *Trinity Lutheran*, the Missouri Department of Natural Resources provided grants to certain qualifying schools, allowing them to resurface their playgrounds using recycled tires. *Id.* at 454. Trinity Lutheran Church applied for a grant to resurface the playground for their preschool and daycare center. Despite meeting every requirement to receive the grant, the government deemed Trinity Lutheran ineligible because of its religious affiliation. *Id.* at 456.

The Court held that mere funding to a religious school does not equate to the establishment of religion. *Id.* at 458. The freedom to engage in the exercise of religion came at “the cost of automatic and absolute exclusion from the benefits of a public program for which the [Church was] otherwise fully qualified.” *Id.* at 462. Requiring Trinity Lutheran to choose between receiving necessary government benefits and engaging in protected First Amendment liberties was not the

goal, nor purpose, of the Establishment Clause. *Id.* (citing *McDaniel v. Paty*, 435 U.S. 618, 626 (1978)). Ultimately, Trinity Lutheran was entitled to funds to resurface its playground. *Id.*

Like *Trinity Lutheran*, the research performed under the Astrophysics Grant serves no intrinsically religious purpose. Record 5. Dr. Nicholas was selected to receive the Astrophysics Grant based on his qualifications. He has a doctorate in astrophysics and has written a leading article on the technology and equipment used in his field. *Id.* at 3. He is referred to in his community as a “wunderkind.” *Id.* at 5. For nine months, Dr. Nicholas fulfilled his duties under the Astrophysics Grant. *Id.* at 6. He published articles and led the University’s Observatory team in creating techniques to measure the “celestial environment.” *Id.* The only reason Dr. Nicholas was removed from the Observatory and denied further funding was because he chose—on his own volition—to express that his research aligned with his personal beliefs. *Id.* at 4, 11.

**3. By awarding Dr. Nicholas the Astrophysics Grant, despite his personal religious affiliations, the University did not violate the Establishment Clause.**

An objection to the Establishment Clause is unavailing when government funds only touch religion as a result of private citizens’ independent choosing, rather than the government’s. *Espinoza v. Montana Dept. of Revenue*, 140 S. Ct. 2246, 2254 (2020). It is true that the “[g]overnment ‘may not coerce anyone to attend church,’ . . . nor may it force citizens to engage in ‘a formal religious exercise.’” *Kennedy*, 142 S. Ct. at 2429 (citing *Lee v. Weisman*, 505 U. S. 577, 589 (1992)). However, when the government draws harsh lines to separate itself from religion entirely, the result is an inhibition to an individual’s protections under the Free Exercise Clause.

When the government passes legislation allowing government funding for certain secular purposes, it cannot consequently exclude “members of any [] faith, *because of their faith* . . . from receiving the benefits of public welfare legislation.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947) (emphasis added). In *Everson*, this Court addressed the constitutionality of a statute that allowed

the parents of children who attended both secular and religious schools to be reimbursed for their children's public transportation expenses. A taxpayer brought an Establishment Clause claim, alleging the government could not reimburse the parents of children who attended religious schools. *Id.* at 3.

This Court disagreed, finding no such violation when the government was merely treating all parents equally, regardless of their religious affiliation. It held that “[the First] Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary.” *Id.* at 18.

Again, in *Kennedy*, this Court held that there was no Establishment Clause violation in allowing a high school football coach to pray quietly by himself on the fifty-yard line after games. 142 S. Ct. at 2407. Joseph Kennedy was fired from his job as Bremerton High School's football coach after he refused to stop praying quietly after football games. When the School District learned of Kennedy's practices, it sent letters admonishing Mr. Kennedy to stop praying publicly. *Id.* at 2416-17. Kennedy refused to quit practicing his beliefs and the School District terminated his employment on the basis that allowing his continued public prayer, while acting as a paid employee, was a violation of the Establishment Clause. *Id.* at 2417-19.

This Court held that “[t]here [was] only the ‘mere shadow’ of a conflict, a false choice premised on a misconstruction of the Establishment Clause.” *Id.* at 2432. Kennedy did not force anyone to join him, nor did he discuss with his players the importance of practicing religion. *Id.* at 2416. His personal convictions did not interfere with his position as a government employee. Therefore, Kennedy's decision to pray did not violate the Establishment Clause. *Id.* at 2432.

The University's choice in selecting Dr. Nicholas to receive the Astrophysics Grant was neutral and absent any consideration of religion. Record 53. The Astrophysics Grant required Dr.

Nicholas to research the Pixelian Comet, a phenomenon that only occurs once every ninety-seven years. *Id.* at 5. Like *Kennedy*, when the University learned of Dr. Nicholas' religious affiliation, they rescinded the grant on the basis that the government could not partake in the establishment of religion. *Id.* at 11; see *Kennedy*, 142 S. Ct. at 2417-19. However, Dr. Nicholas' desire to use his research to further his own beliefs, or to prove or disprove certain theories that may fall within his religion, is unrelated to the funding he received. It is Dr. Nicholas' free choice. At no point in his time working at the University did he fail to perform the research, publish necessary statistics, or in any other way fail to abide by the purpose of the Astrophysics Grant. Additionally, nothing in the Astrophysics Grant required Dr. Nicholas to come to certain "acceptable" conclusions within the scientific community. Record 9-10. The University, by terminating the Astrophysics Grant and Dr. Nicholas' work in the Observatory, discriminated against Dr. Nicholas based on his religious preferences rather than acting within the justifiable bounds of the Establishment Clause.

**B. The University Violated The Free Exercise Clause When It Revoked The Astrophysics Grant From Dr. Nicholas On The Basis Of His Religion.**

When the University terminated Dr. Nicholas under the guise of abiding by the Establishment Clause, it violated Dr. Nicholas' free exercise. This Court has long recognized the "play in the joints" between what the Establishment Clause permits and the Free Exercise Clause compels." *Trinity Lutheran*, 582 U.S. at 458 (citing *Locke v. Davey*, 540 U.S. 712, 718 (2004)). The University, in an attempt to avoid establishing religion, in turn forced Dr. Nicholas to choose between receiving necessary benefits and freely exercising his religion. However, "in no world may a government entity's concerns about phantom constitutional violations justify actual violations of an individual's First Amendment rights." *Kennedy*, 142 S. Ct. at 2432.

**1. The University cannot inhibit the practice of religion, even under the guise of avoiding an Establishment Clause violation.**

The Free Exercise Clause, as applied to the States through the Fourteenth Amendment, prohibits the government from inhibiting the practice of religion. *Kennedy*, 142 S. Ct. at 2421 (citing *Cantwell v. Connecticut*, 310 U. S. 296, 303 (1940)). In *Kennedy*, the Court held that the School District’s attempted use of the Establishment Clause to prevent the coach’s prayer was a violation of Kennedy’s Free Exercise rights. *See Kennedy*, 142 S. Ct. 2407 (2022). The School District forbade Kennedy from engaging in any action while acting in his capacity as a coach that could be reasonably seen as an endorsement of prayer. *Id.* at 2417. The explanation for such restrictions on Kennedy’s actions was the concern that allowing him to pray was a violation of the Establishment Clause. *Id.* at 2417-18.

This Court found that the private religious actions of a state employee is not enough to constitute an Establishment Clause violation. The Court refused to agree with the School District’s assertion that teachers must be prohibited from praying while performing their duties. *Id.* at 2431. “Rather than respect the First Amendment’s double protection for religious expression, [the District asked the Court to] preference secular activity.” *Id.* This is not only an error in Establishment Clause jurisprudence, but an infringement upon the Free Exercise Clause. Kennedy was faced with the choice of losing his job or ceasing the practice of his sincerely held religious beliefs. This understanding of the First Amendment was in error; the “Clauses have ‘complementary’ purposes, not warring ones where one Clause is always sure to prevail over the others.” *Id.* at 2426; citing *Everson*, 330 U.S. at 13-15.

When Dr. Nicholas’ research articles received negative attention from the scientific community, University President Seawall sent a letter to Dr. Nicholas, admonishing him to only research and draw conclusions that were accepted in the scientific community. Record 10. Dr.

Nicholas refused. He acknowledged that the University previously allowed other researchers to rely on paganist historical writings. *Id.* He insisted that his conclusions were scientific and should not be censored. *Id.* Again, President Seawall admonished Dr. Nicholas to cease drawing conclusions that conformed to his religious beliefs, and if he continued to do so, the Astrophysics Grant would be revoked. *Id.* Dr. Nicholas persisted. As a result, the Observatory changed its policy and denied Dr. Nicholas entry into the Observatory. Record 11. The University released a press release stating that it “could not countenance the confusion of science and religion.” *Id.*

**2. The University violated the Free Exercise Clause when it effectively punished Dr. Nicholas for practicing his religion.**

“[W]e have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson*, 142 S. Ct. at 1996 (citing *Sherbert v. Verner*, 374 U. S. 398, 404 (1963)). In *Carson*, this Court held that the government’s refusal to provide tuition assistance to students in religious schools, when it willingly did so for students at secular schools, was a violation of the Free Exercise Clause. *Id.* By restricting the benefits of an assistance program from certain groups solely on the basis of religion, the government “‘effectively penalizes the free exercise’ of religion.” *Id.* at 1997; citing *Trinity Lutheran*, 582 U.S. at 459.

Like *Kennedy* and *Carson*, the University refused to allow Dr. Nicholas to freely exercise his religion under the guise that it would violate the Establishment Clause. *See Kennedy*, 142 S. Ct. at 2417-18; *Carson*, 142 S. Ct. at 1997. Here, the University discriminated against Dr. Nicholas solely because he affiliated himself with a religious preference. The University is effectively penalizing Dr. Nicholas for practicing his sincerely held religious beliefs. For nine months, Dr. Nicholas fulfilled his duties and responsibilities in researching the Pixelian Event. Record 5-6. He developed new measures of comparison for future events, published his findings in a peer-

reviewed journal in his field, and cross-referenced his findings with ancient writings of the Meso-American indigenous tribes. *Id.* at 6-7. He noted the similarities between his research of the cosmos and the depictions in the Meso-American hieroglyphs. *Id.* at 7. The University previously allowed other scientists to use writings from Greek, Roman, Incan, and other origins in their research. *Id.* at 10. However, it was only because Dr. Nicholas affiliated himself with his religion that he was denied funding. *Id.* Thus, the University penalized Dr. Nicholas for exercising his religion. *See Carson*, 142 S. Ct. at 1997.

**C. The University’s Violation Of The Free Exercise Clause, Without Justification Under The Establishment Clause, Fails Strict Scrutiny.**

Government action that entangles religion must be neutral and generally applicable so as not to target religion. *Kennedy*, 142 S. Ct. at 2421-22. When the government violates an individual’s First Amendment rights, its actions are subject to strict scrutiny. The government’s action will only stand if it can prove “its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest.” *Lukumi*, 508 U.S. at 546. Because there was no Establishment Clause violation when the University awarded Dr. Nicholas the Astrophysics Grant, and because taking away the Astrophysics Grant violated Dr. Nicholas’ Free Exercise rights, the University’s actions fail strict scrutiny.

**1. The University’s decision to revoke Dr. Nicholas’ funding was not neutral and generally applicable.**

This Court’s jurisprudence has historically varied on which test to apply for violations of the Establishment and Free Exercise Clauses. Most recently, this Court has applied the neutral and general applicability test. *Kennedy*, 142 S. Ct. at 2421-22. Such test requires the petitioner to prove that “government entity has burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Id.* (citing *Employment Div. v. Smith*, 494 U.S. 872 (1990)).



Government action is not neutral if “it is ‘specifically directed at . . . religious practice.’” *Kennedy*, 142 S. Ct. at 2422 (citing *Smith*, 494 U. S., at 878). Subsequently, “[a] government policy will fail the general applicability requirement if it ‘prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests. . ..’” *Id.* (citing *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021)).

The actions taken by the University are not neutral or generally applicable. Dr. Nicholas’ Astrophysics Grant was terminated solely because of his religious beliefs while also performing research on the Pixelian Event. Record 53. Dr. Nicholas refused to stop exploring his own beliefs when commanded by President Seawall and was punished as a result. The University targeted Dr. Nicholas’ religious affiliation, without regard for his research or the purpose of the Astrophysics Grant. *Id.* at 10-11. The University’s conduct also fails the general applicability prong. The University has previously allowed other scientists to include ancient writings in their research. *Id.* at 10. However, it was only when Dr. Nicholas expressed his religious beliefs that he excluded from the Observatory. *Id.* Because of this, the University’s response to Dr. Nicholas’ research fails the neutral and general applicability test.

**2. The University’s denial of the Astrophysics Grant violates the Free Exercise Clause and fails strict scrutiny.**

Once the petitioner shows the government’s course of action violates his Free Exercise protections under the First Amendment, the action will stand only if the government can prove “its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest.” *Kennedy*, 142 S. Ct. at 2422 (citing *Lukumi*, 508 U.S. at 546).

In the broadest sense, the government has a compelling interest in avoiding the establishment of religion. The First Amendment forbids the government from engaging in activity that promotes or establishes religion. U.S. Const. Amend. 1. However, the means employed by the

University were not narrowly tailored to achieve that interest. Dr. Nicholas' research was performed in accordance with the Astrophysics Grant. Though his research supported his own religion, it did not obstruct his ability to study the Pixelian Event. Record 5, 10. The funding was rescinded solely because of his private choice to exercise his religion, which violated his First Amendment rights. *Id.* To avoid the establishment of religion, the University favored its own preferences over the free exercise rights of a private citizen. *Id.* at 2426 (citing *Everson*, 330 U.S. at 13-15). These actions do not survive the “play in the joints” analysis between the Free Exercise and Establishment Clauses. *Trinity Lutheran*, 582 U.S. at 458 (citing *Locke*, 540 U.S. at 718).

### **CONCLUSION**

It is for the previously stated reasons that the Dr. Nicholas respectfully requests this Court reverse the decision of the lower court and find that the University violated his First Amendment right to free speech, and that it did not violate the Establishment Clause.

Respectfully submitted,

Team 31  
*Counsel for Petitioner*

## **APPENDIX A—CONSTITUTIONAL PROVISIONS**

**The First Amendment to the Constitution of the United States** provides that “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.” U.S. Const. amend. I.

## **CERTIFICATE OF COMPLIANCE**

The work product contained in this brief is of the members of Team 31 only. Team 31 has complied fully with its law school honor code and with all the Rules of the Competition for the Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition.