No. 26-1437

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CAMERON JOHNSON; LUKE THOMAS; and TRACE STEVENS,

Plaintiffs-Appellants,

v.

A. SCOTT FLEMING, in his official capacity as the Director of the State Council of Higher Education for Virginia; JOHN JUMPER, in his official capacity as the Chair of the State Council of Higher Education for Virginia; MAJOR GENERAL JAMES W. RING, in his official capacity as the Adjutant General of Virginia; and DONALD L. UNMUSSIG, in his official capacity as the Chief Financial Officer of the Virginia Department of Military Affairs,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Virginia
Case No. 3:25-cv-00407-RCY

APPELLANTS' EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL UNDER FRAP 8

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CORPORATE DISCLOSURE STATEMENT

Plaintiffs-Appellants Cameron Johnson, Luke Thomas, and Trace Stevens are individual citizens and Virginia residents.

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INTRODUCTION

Virginia provides grants worth thousands of dollars to college students—including for religious degrees—yet denies them to Plaintiffs Cameron Johnson, Luke Thomas, and Trace Stevens simply because they chose the "wrong" religious degrees. The district court blessed that discrimination based on *Locke v. Davey*, 540 U.S. 712 (2004). But *Locke* involved no discrimination *among* religions, which is a flagrant First Amendment violation. And because Virginia has sovereign immunity, Plaintiffs' ongoing loss of funding is irreparable.

Cameron and Luke need immediate relief because they must apply by July 31 to have "priority" for a grant. If they apply after, a full award isn't guaranteed. Trace needs immediate relief because he must register by July 1 for a fall semester grant.

Accordingly, this Court should enter an injunction to stop Virginia from inflicting further irreparable harm on Plaintiffs while this appeal proceeds. And the Court should do so immediately because Plaintiffs' deadlines for submitting grant paperwork are impending.

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the district court's order denying Plaintiffs-Appellants' motion for a preliminary injunction under 28 U.S.C. § 1292(a)(1).

This Court has pendant jurisdiction to review the district court's order dismissing Cameron Johnson's and Luke Thomas's claims under Rule 12(b)(6) because "an award of preliminary injunctive relief in [their] favor—predicated[ ] … on the now-dismissed Free Exercise … claims—would necessitate reinstatement of … those claims." *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 411 (4th Cir. 2026). Put differently, the "partial" dismissal order "is 'inextricably intertwined' with the district court's [injunction] denial … because [this Court's] consideration of the latter order necessarily resolves the former," *Lyons v. PNC Bank, Nat'l Ass'n*, 26 F.4th 180, 191 (4th Cir. 2022), and "review of the nonappealable issue is necessary to ensure meaningful review of the appealable one," *Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105, 111 (4th Cir. 2013) (quotation omitted).

BACKGROUND

I. The grants at issue.

Virginia denies Cameron Johnson, Luke Thomas, and Trace Stevens generally available college grants based *solely* on their religious exercise. This case involves two grant programs administered under conflicting rules. This section reviews each program separately.

A. Virginia Tuition Assistance Grant Program

The State Council of Higher Education for Virginia "administer[s]" the Virginia Tuition Assistance Grant Program (VTAG) and "may adopt regulations" to implement the grant. Va. Code § 23.1-629. All "Virginia students … obligated to pay tuition as full-time undergraduate, graduate, or professional students" qualify, Va. Code § 23.1-631(A), if they comply with selective-service requirements, Va. Code § 23.1-632. But to be considered "[p]riority students" and guarantee "a full award," new recipients must apply for VTAG "by July 31." 8 VAC 40-71-40(B).

Currently, most undergraduates receive $5,250 annually, *Va. Tuition Assistance Grant Program*, STATE COUNCIL OF HIGHER EDUC. FOR VA., https://perma.cc/PN4N-VM45 (VTAG Summary), for up to "four academic years," Va. Code § 23.1-631(B). The result is a generally available grant to undergraduates worth up to $21,000.

There are two requirements. First, students must attend "an eligible institution," Va. Code § 23.1-631(A), which "means a nonprofit private institution of higher education whose primary purpose is to

provide collegiate, graduate, or professional education and not to provide *religious training or theological education*," Va. Code § 23.1-628(A) (emphasis added); *accord* 8 VAC 40-71-10. Liberty University, which Plaintiffs attend, is eligible. VTAG Summary.

Second, students must study "in an eligible program," 8 VAC 40-71-40(C)(2), which is statutorily defined as "undergraduate, graduate, or professional collegiate work in educational programs other than those providing *religious training or theological education*." Va. Code § 23.1-631(C) (emphasis added). Virginia regulations clarify that the exclusion applies to study in "CIP [Classification of Instructional Programs] Code 39-series programs," 8 VAC 40-71-10, as defined by the National Center for Education Statistics (NCES), a component of "the U.S. Department of Education" (DOE), *About IES*, INST. OF EDUC. SCIENCES, https://perma.cc/9SSH-NTKS.

DOE developed the CIP code to facilitate tracking and "reporting of fields of study and program completions" activity. *Introduction to the Classification of Instructional Programs: 2020 Edition (CIP-2020)* at 1, NCES, https://perma.cc/549R-8G2C. The code contains "general categories" for data placement, "*not* exact duplicates of a specific major or field of study." *Id.* (emphasis added). NCES says the code is "*not* a prescriptive list of officially recognized … programs" and is "*not* intended to be a regulatory device." *Id.* (emphasis added). Indeed, schools

construe the code differently in "select[ing] the particular CIP [designation] that best describes their instructional program[s]," *id.* at 4.

Despite these warnings, the State Council treats the CIP code as "a regulatory device." *Id.* at 1. Studying religion in Code 39-series programs—loosely defined as "programs that *focus on* the intramural study of theology and that prepare individuals for the professional practice of religious vocations"—is VTAG *ineligible*. *Detail for CIP Code 39*, NCES, https://perma.cc/CD9T-8B8Q (emphasis added). Conversely, studying religion in Code 38-series programs—generally described as "programs that *focus on* logical inquiry, philosophical analysis, and the academic study of organized systems of belief and religious practices"—is VTAG *eligible*. *Detail for CIP Code 38*, NCES, https://perma.cc/ESD9-LZTZ (emphasis added); *accord* 8 VAC 40-71-10.

The supposed distinctions between these two categories make no functional difference. *First*, Code 38-series programs—those that Virginia will fund with grants—are indisputably religious. They may "focus[ ] on the philosophy and teachings of Jesus Christ and his apostles," "[i]nclude[ ] instruction in Christian sacred scripture," and "stud[y] … one … of the main branches of the faith." *Detail for CIP Code 38.0203*, NCES, https://perma.cc/K4V9-MWZ9.

That means Code 38-series programs may concentrate on Christian theology, scripture, and a denomination's traditions, which is functionally indistinguishable from Code 39-series programs that may

"focus[ ] on the Christian … Bible … with an emphasis on understanding and interpreting the theological, doctrinal, and ethical messages contained therein." *Detail for CIP Code 39.0201*, NCES, https://perma.cc/89Z9-V3VC. In fact, course requirements for Code 38-series and Code 39-series majors may be largely identical. Doc. 23-1. (showing Code 38-series and Code 39-series degrees with course requirements that are materially indistinguishable).

Second, Code 38-series programs may prepare students for religious vocations or advanced seminary training—just like their Code 39-series counterparts. Doc. 1 ¶¶ 78–83. Take Virginia Union University's (Code 38-series) Religious Studies program, which prepares students "for graduate work in the discipline of religion and ministerial studies" or to "pursue religious vocations (i.e., youth ministers, pastoral assistants, associate ministers, etc." *Course Catalog – Religious Studies Major* at 49, VA. UNION UNIV., https://perma.cc/PNM2-3YYA. Or consider Bluefield University's (Code 38-series) Music program, where students may "focus on … church music" and "prepare[ ] … for a professional vocational music ministry in the church." *Music (BA)*, BLUEFIELD UNIV., https://perma.cc/VW7M-HXBS. Those degrees are geared towards ministry, yet VTAG eligible.

Third, Code 39-series degrees don't guarantee religious career paths. Most undergraduate degrees are now fungible. And the majority of students graduating from Code 39-series programs don't enter the

ministry; they take *secular jobs*. Consider students who graduated from Liberty University with a Code 39-series designation of "Theology and Religious Vocations" from 2016–2018. A year after graduation, they overwhelmingly reported secular employment. *Emp. Outcomes - Earnings, Va. Insts.*, STATE COUNCIL FOR HIGHER ED. OF VA., https://bit.ly/4emSA6C.[1] So a Code 39-series major is a strong indicator of *personal* faith. But it's a poor gauge of *professional* religious calling.

VTAG's arbitrariness doesn't stop there. It sometimes funds students in Code 39-series programs—specifically, if they "*double-major*" in a secular program that requires "an equal or greater number of courses." 8 VAC 40-71-10 (emphasis added). VTAG also funds students who study for a religious *minor* that "prepar[es] [them] for religious leadership" or "more formal training in … seminaries," *Religious Leadership & Ministry (Minor)*, MARY BALDWIN UNIV., https://perma.cc/D3ZE-TYDF. Only students who *major* in a Code 39-series program arbitrarily lose the grant. 8 VAC 40-71-10 (regulating "eligible major[s] or concentration[s]" within a major).

[1] To view this data, select "Liberty University," "Four-Year Bachelor's Degree," "Theology and Religious Vocations," "2016-2018 cohort," and "1 year" postgrad. Then "Employment by Industry" appears at the bottom.

B. Virginia National Guard State Tuition Assistance Program

The Adjutant General of Virginia oversees the Virginia National Guard State Tuition Assistance Program (VANGSTAP) and can issue regulations to implement it. Va. Code § 23.1-610(A). This grant is available to Virginia National Guard members with "a minimum remaining obligation of two years" who have completed their "initial active duty service" and "satisfactorily perform[ed]" their duties if they're enrolled—and in good standing—at an eligible institution. *Id.*

Eligible schools are statutorily defined as "institution[s] of higher education" that are public or that are private and "accredited non-profit[s] … whose primary purpose is to provide collegiate or graduate education and not to provide *religious training or theological education*." *Id.* (emphasis added). All agree that Liberty University is an eligible school. Currently, this grant provides students between $4,500 and $10,000 a semester, depending on the level of participation and funding allocated each year. *VANGSTAP Summary*, VA. NAT'L GUARD, https://perma.cc/7EC5-TEDK (VANGSTAP Summary).

The Adjutant General sets additional limits on the grant via a Command Policy. Doc. 1-5. Most limits are benign, such as generally requiring students to attend schools located in Virginia and to maintain a minimum cumulative GPA. *Id.* at 4, 6. But one expressly discrimi-

nates based on religion, stating that "[i]n accordance with the Constitution of Virginia, Article I., Section 16, theological degrees are ineligible for [VANGSTAP] award (e.g., seminary school)."[2] *Id.* at 3. So students who apply for VANGSTAP are required to sign a promissory note that says the grant "cannot be used to fund *degrees in religious training or theological education*." Doc. 1-8 at 8 (all-caps omitted) (emphasis added). Because the Guard interprets state law to bar grants for "*religious training or theological education*," it deems all students pursuing religious or theological degrees VANGSTAP ineligible. Doc. 1-9 at 1; Doc. 20-3 at 1 (emphasis added). And the Guard exercises unfettered discretion in determining which majors are religious—and thus barred.

The Guard is aware that the State Council makes VTAG grants available to *some* students pursuing religious training but declines to follow suit, stating that "VTAG[ ] is managed by another organization within the State government that [the Guard] has nothing to do with." Doc. 1-9 at 1. According to the Guard, awarding a VANGSTAP grant for any "degree in religion" would "violate the law." *Id.* Still, VANGSTAP may "pay for a particular religious 'required' course for *another type of degree* to complete a semester." Doc. 1-7 at 1 (emphasis added).

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[2] An updated policy online contains the same language. Policy Number 72 – 25 at 3, VA. ADJUTANT GENERAL (May 19, 2025), https://perma.cc/TQ3N-NB4U.

Ironically, the Guard employs, and its members benefit from, individuals who pursue religious vocations. The Guard has an official Chaplains Office that "provide[s] the highest levels of religious support" and is led by a "State Chaplain"—an ordained, bi-vocational minister with a Master of Arts in Religion who holds the rank of colonel and earns commensurate pay. *Chaplain Support*, VA. NAT'L GUARD, https://perma.cc/3T2U-YQ35; *accord Lee Named New VNG State Chaplain*, VA. NAT'L GUARD, https://perma.cc/EB7R-M7QQ.

Students must register for VANGSTAP by July 1 for the Fall Semester. VANGSTAP Summary. Once grants are awarded, the Guard sends an "[a]pproval roster … to [each] school at the beginning of each semester[,] and the school will invoice [the Guard] for tuition only." *Id.* (all-caps omitted).

II. Defendants reject Plaintiffs' grant requests

Virginia denies VTAG grants to Cameron and Luke and VANGSTAP grants to Trace, penalizing their religious exercise.

A. Cameron Johnson

Cameron Johnson is a lifelong Virginia resident. Doc. 1 ¶¶ 39, 93. He is a Christian of the Baptist denomination who believes that the Bible is the supreme, authoritative, true Word of God. *Id.* ¶¶ 97–104. The Bible teaches Cameron that *every* Christian—regardless of their occupation, position, or circumstances—must share the good news about

Jesus. *Id.* ¶¶ 105–106. He feels called to share his faith but doesn't know if he will do that within a religious vocation or a secular career. *Id.* ¶¶ 109–10. Either way, Cameron seeks to be a Christian leader who pursues whatever career God has for him. *Id.* ¶¶ 111–13.

Cameron is pursuing an undergraduate degree in Pastoral Leadership at Liberty University to develop his leadership skills, lay a foundation for graduate school, and prepare for vocational ministry if that is what God has in store. *Id.* ¶¶ 114–16. But Cameron also has an interest in secular careers, including real estate or leading a community-building nonprofit. *Id.* ¶ 118. So he plans to minor in business. *Id.* ¶ 119. He is currently a freshman at Liberty.

Cameron submitted a VTAG application to Liberty's financial-aid office last year. But that application was denied because Pastoral Leadership is "a CIP code 39 program." Doc. 1-4 at 1. Unless this Court enters an injunction, Cameron will be deprived of a VTAG grant again and forced to take out more student loans. Doc. 23-3 ¶¶ 29–34.

B. Luke Thomas

Luke Thomas is a lifelong Virginian. Doc. 1 ¶¶ 40, 129. He is a non-denominational Christian who believes that the Bible is the Word of God. *Id.* ¶¶ 132–37. Luke's view of scripture is that *every* Christian is compelled to tell others about the Gospel, regardless of their occupation,

position, or circumstances. *Id.* ¶ 138. Luke is passionate about music and serves on his church's worship team. *Id.* ¶ 137.

Luke originally planned to enter a trade or start a small business but later decided to pursue music. *Id.* ¶¶ 139–40. He believes that God gifted him musical talent to minister to people but doesn't know whether that means becoming a worship pastor or pursuing a commercial music career as a singer/songwriter. *Id.* ¶¶ 141, 144–47. Either way, he plans to start his own business someday. *Id.* ¶ 146.

Luke chose to study at Liberty University, which has a Music and Worship major that would further his musical education and prepare him for potential ministry. *Id.* ¶¶ 142–44. That degree is a CIP Code 39-series program and thus ineligible for VTAG. *Id.* ¶¶ 150–51. So Luke initially declared a Music Vocal major to begin taking instrument classes and maintain his grant. Doc. 30-2 ¶¶ 5–8. But Luke still intends to major in Music and Worship and must declare that major soon to take certain required courses. *Id.* ¶¶ 3–4, 8; Doc. 23-4 ¶¶ 13–15, 20–21. Unless this Court enters an injunction, Luke will lose VTAG when he declares a Music and Worship major.

C. Trace Stevens

Trace Stevens is a longtime Virginia resident. Doc. 1 ¶¶ 41, 184. He is a Christian of the Assemblies of God denomination. *Id.* ¶ 181–82.

Trace believes that *every* Christian is called to share their faith, no matter their occupation, position, or circumstances. *Id.* ¶ 185.

Trace felt called to pursue a ministry degree but was hindered by cost. *Id.* ¶¶ 190–91. A Virginia National Guard recruiter told Trace that VANGSTAP would help him pay for a ministerial degree, so he joined the Guard. *Id.* ¶¶ 192–96. Later, Trace discovered that it wouldn't pay, though a federal grant would assist. *Id.* ¶¶ 199–202. Given the National Guard recruiter's misrepresentation, Trace asked the Governor's office for an exception, but the Adjutant General said that his "theological degree program [was] ineligible." Doc. 1-6 at 1; *accord* Doc. 1-7 at 1–2; Doc. 20-3 at 1. Trace pointed out that his Religion Degree was a Code 38 and thus eligible for VTAG, but the Guard said it didn't matter and denied him anyway. Doc. 1-9 at 1.

Trace is now a Specialist in the Guard with a Bachelor of Science in Religion (General Track) from Liberty that is VTAG *eligible* but VANGSTAP *ineligible*. Doc. 1 ¶¶ 206, 223–29. Trace has enrolled in a Master of Divinity program at Liberty that is also VANGSTAP ineligible, while he pursues becoming a commissioned officer and Guard chaplain. *Accord id.* ¶¶ 268–69; Doc. 30-1 ¶ 13. Unless this Court enters an injunction, Trace will continue to be deprived of VANGSTAP and struggle to pay for a chaplaincy-related degree that directly benefits the Guard and the Commonwealth. Doc. 30-1 ¶¶ 7–13.

III. Procedural history

Plaintiffs filed suit in the U.S. District Court for the Eastern District of Virginia, asserting that Virginia law violated the Religion Clauses four ways: (1) excluding Plaintiffs from otherwise available public benefits, (2) failing to be neutral and generally applicable, (3) favoring certain denominations, and (4) causing excessive entanglement. Doc. 1 ¶¶ 294–342.

Plaintiffs moved for a preliminary injunction. Doc. 22; Doc. 23. Nearly eight months after briefing completed, the district court denied the motion and dismissed Cameron's and Luke's claims. Doc. 31. The court held that "so long as *Locke* remains good law, [Cameron's and Luke's] claims against the State Council Defendants, as administrators of the VTAG Program, must fail." *Id.* at 9. Though it "suspect[ed] that *Locke* also dooms Plaintiffs' claims against the administrators of [VANGSTAP]," the court declined to dismiss Trace's claims against the Guard based on "the limited factual record before the Court." *Id.*

Plaintiffs filed a timely notice of appeal, Doc. 34, moved for an injunction pending appeal in the district court, and requested a ruling on that motion by April 17, Doc. 37. *Accord* FRAP 8(a)(1)(C); Local Rule 8. At the time and date of this filing, the district court hadn't ruled on that motion.

RELIEF REQUESTED

Plaintiffs seek an injunction pending appeal that bars Defendants from denying them grants through the Virginia Tuition Assistance Grant Program or Virginia National Guard State Tuition Assistance Program based on their selection of a religious- or theological-degree program or resulting application delays. Cameron and Luke seek grants for the 2026-2027 school year, which are subject to a priority application deadline of July 31. And Trace seeks a grant for the Fall Semester, the registration deadline for which is July 1. Those deadlines necessitate a preliminary determination that the district court erred.

LEGAL STANDARD

This Court considers four factors in weighing a motion for injunction pending appeal: (1) likelihood of success on the merits, (2) likelihood of irreparable harm absent preliminary relief, (3) the balance of the equities, and (4) the public interest. *E.g.*, *Doe by Doe v. South Carolina*, No. 25-1787, 2025 WL 2375386, at *8 (4th Cir. Aug. 15, 2025). The first two are most critical. *Id.* And the second two merge when the government opposes the motion. *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 225 (4th Cir. 2024).

ARGUMENT

I. Plaintiffs will likely prevail on the merits

A. *Locke* is distinguishable.

The district court viewed *Locke* as preempting all First Amendment scholarship claims. Doc. 31 at 9–18. That's incorrect. Courts have distinguished *Locke* for years. *E.g.*, *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1256 (10th Cir. 2008). Following recent Supreme Court precedent, courts largely view *Locke* as cabined to its facts. *E.g.*, *Loe v. Jett*, 796 F. Supp.3d 541, 572 n.48 (D. Minn. 2025). So the district court erred in extending *Locke* to this case's unique facts, which involve discrimination *among* religious degrees.

This expansion ignores *Locke* itself, which refused to "extend the [*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532–33 (1993),] line of cases well beyond not only their *facts* but their *reasoning*." 540 U.S. at 720 (emphasis added). So too here. Virginia seeks to extend *Locke* to materially different facts and claims. But *Locke* doesn't control this case for four reasons.

First, *Locke* didn't approve all religion-based scholarship exclusions. The Court merely "uph[eld] the Promise Scholarship Program *as currently operated* by the State of Washington." 540 U.S. at 725 (emphasis added). But Virginia's programs operate differently in significant ways. While Washington uniformly excluded "devotional theology" degrees, *id.* at 717, Virginia picks and chooses. On one hand,

VTAG funds CIP Code 38-series religious majors but excludes *CIP Code 39-series* religious majors, even though some programs are nearly indistinguishable. *E.g.*, *VTAG - Religious Undergraduate Degree Programs*, LIBERTY UNIV., https://bit.ly/4cR985C (listing "Religion: Evangelism" as VTAG eligible and "Christian Leadership: Theology and Apologetics" as VTAG ineligible).

On the other hand, VANGSTAP excludes *all* religious majors. So Virginia bars no "distinct category of instruction." 540 U.S. at 721. And while VTAG—like Washington's Promise Scholarship—"*includ[es]* [some] religion in its benefits," *id.* at 724 (emphasis added), VANGSTAP *excludes* religious degrees completely. That "singles out [certain religious students] for special burdens," contrary to *Locke*. *Id.* at 724 n.8 (citation modified).

Second, in *Locke*, Washington left classifying a "student's major [as] devotional" to each "institution" using its own standards. *Id.* at 717. Conversely, Virginia imposes government-religiosity standards on private institutions (VTAG) or makes religiosity determinations itself with no standards or guidelines (VANGSTAP). That is a far cry from *Locke*. *Accord id.* at 724 n.8.

Third, *Locke* considered unique facts: a student attending college "to prepare himself …for a lifetime of ministry, specifically as a church pastor." *Id.* at 717 (citation modified). That pastoral goal was "the only reason" he pursued "a college degree." *Id.* at 721 (quotations omitted).

So *Locke* focused on "[t]raining someone [intent on] lead[ing] a congregation," which it saw as akin to "support[ing] church leaders." *Id.* at 721–22; *accord Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464 (2017) (emphasizing what Davey "proposed *to do*").

Here, the facts differ considerably. Cameron is undecided about his career path. He chose a Pastoral Leadership major to keep his options open. Doc. 23-3 ¶¶ 9–13, 21. But he remains interested in a real-estate career or leading a community-based nonprofit. *Id.* ¶¶ 14–16. Luke similarly chose college to prepare for "either a religious or secular music career." Doc. 23-4 ¶ 13. Upon completing his major in Music and Worship, he may pursue "work in the music industry" as "a singer or songwriter." *Id.* ¶ 26. And Trace is pursuing a Master of Divinity to become a chaplain for the same Guard that refuses to help fund that education—a military scenario that *Locke* didn't consider. Doc. 23-5 ¶¶ 33–34, 62–63; Doc. 30-1 ¶¶ 13–17.

Fourth, *Locke* "reject[ed]" the claim that Washington's scholarship was "presumptively unconstitutional" because it "facially" discriminated based on "religion." 540 U.S. at 720; *accord id.* at 725. Plaintiffs here focus on different arguments. They contend that Virginia's grants violate the First Amendment because they: (1) deny public benefits based on religious activity or use, (2) aren't evenhanded or generally applicable, (3) favor certain denominations, and (4) result in excessive entanglement. Doc. 23 at 12–26. So *Locke* doesn't control. *Accord Colo.*

Christian Univ., 534 F.3d at 1256, 1266–67. (In addition, Plaintiffs contend that *Locke* was wrongly decided, conflicts with intervening Supreme Court precedent, and should be overruled.)

B. Virginia's grants discriminate based on religious activity or use.

Because *Locke* doesn't apply, the First Amendment rule is clear: Virginia's "anti[-]establishment interest" can't justify barring citizens from an otherwise "available public benefit because of their religious exercise." *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 781 (2022); *accord Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 478, 484–85 (2020); *Trinity Lutheran*, 582 U.S. at 462–63, 466.

Describing Plaintiffs' choice of degree as religious "activity" or "use" makes no difference. *Carson*, 596 U.S. at 781, 787–88 (citation modified); *accord id.* at 784–85. States can't "exclude religious persons from … public benefits on the basis of their anticipated religious use of the benefits." *Id.* at 789.

That is precisely what VTAG and VANGSTAP do. Plaintiffs are denied grants because they selected degrees that Virginia associates with ministry—though most degrees are fungible and can be used for secular positions. So both "program[s] operate[ ] to identify and exclude otherwise eligible [students] on the basis of their religious exercise." *Id.* at 789. Plaintiffs "are members of the community too, and their exclusion from the scholarship program[s] here is odious to our

Constitution and cannot stand." *Espinoza*, 591 U.S. at 488–89 (citation modified).

C. Virginia's laws aren't neutral or generally applicable.

VTAG and VANGSTAP lack neutrality and general applicability. Rules aren't neutral if they "discriminate[ ] against some … religious beliefs," such as by "prohibit[ing] preaching" by one group and "permit-[ting] preaching" by another. *Lukumi*, 508 U.S. at 532–33. These programs fail neutrality twice over: VTAG gives grants to religious students who pursue CIP Code 38-series degrees but discriminate against students who pursue CIP Code 39-series degrees, and VANGSTAP excludes religious Guard members from theological study—even to become a Guard chaplain—when VTAG funds it for others. In both ways, Virginia "disfavor[s] [Plaintiffs'] religion." *Id.* at 532.

Turning to general applicability, courts find that it's lacking when laws "invite the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (citation modified). Both grants have such mechanisms here. VTAG allows (1) discretionary exemptions from the religious-double-major rules "based on circumstances beyond the control of the student," 8 VAC 40-71-10, and (2) "case-by-case" exemptions to the full-time-student

requirement for “disability or other medical reasons,” 8 VAC 40-71-40(C)(2)(c).

VANGSTAP is similarly flawed under “regulations … prescribed by the Adjutant General,” Va. Code § 23.1-610(A), who has “final authority” over the program, Doc. 1-5 at 8. Most of VANGSTAP’s requirements are discretionary and subject to individualized application and exception, including the ban on “theological degrees,” *id.* at 3, which the Guard ambiguously equates with “degrees in religious training or theological education,” Doc. 1-8 at 8 (all-caps omitted). The Command Policy explicitly authorizes “case-by-case” exemptions for those studying “outside of Virginia,” “unable to re-enlist,” or subject to “recoupment” in some instances. Doc. 1-5 at 3–4, 9. And the Guard will give grants to students studying secular majors, even if they take religious classes. These “formal system[s] of entirely discretionary exceptions” render Virginia’s laws not generally applicable. *Fulton*, 593 U.S. at 536.

D. Virginia’s grants impose a denominational preference.

The First Amendment requires “denominational neutrality” and bars “laws that aid or oppose particular religions.” *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm’n*, 605 U.S. 238, 247 (2025) (quotation omitted). Virginia’s grants fail on both counts.

VTAG rewards students who pursue (purportedly more secular) CIP Code 38-series religious degrees over those who pursue (ostensibly

more devotional) "CIP Code 39-series" religious degrees. 8 VAC 40-71-10. But the extent to which "religious education" should "inculcate religious doctrine" is a "fundamentally theological choice[,] driven by … different religious doctrines." *Cath. Charities*, 605 U.S. at 252. So funding degrees that focus less on "proselytization … establishes a preference for certain religions based on the commands of their religious doctrine" in violation of the Religion Clauses. *Id.* at 250.

VANGSTAP also requires "official differentiation on theological lines." *Id.* at 249. The Guard decides whether each student's "degree[ ]" is on the secular or "religious training" side of the boundary, Doc. 1-8 at 8 (all-caps omitted); *accord* Va. Code § 23.1-610, without any clear definition of what constitutes a "theological degree[ ]," Doc. 1-5 at 3. This selection requires the Guard "to decide how religious beliefs are derived and to discern the boundary between religious faith and academic" study. *Colo. Christian Univ.*, 534 F.3d at 1262. And that inevitably leads to the Guard "impos[ing] a denominational preference by differentiating between [religious majors] based on theological choices." *Cath. Charities*, 605 U.S. at 250.

E. Virginia's grant programs result in excessive entanglement.

The First Amendment bars excessive "state entanglement with religion." *Carson*, 596 U.S. at 787. This entanglement occurs when government delves into "how a religious school pursues its educational

mission," including the formulation and classification of degrees. *Id.* Any kind "of state inspection and evaluation of the religious content of a religious organization is fraught with … entanglement" concerns. *Larson v. Valente*, 456 U.S. 228, 255 (1982) (quotation omitted).

Here, VTAG forces religious institutions to apply a government-imposed religion quotient—CIP Code 38-series vs. 39-series degrees. But religious distinctions are for schools to make: "the government is not permitted to have an ecclesiology, or to second-guess the ecclesiology espoused by" religious organizations. *Colo. Christian Univ.*, 534 F.3d at 1265. Under VANGSTAP, the Guard's evaluation of whether students are pursuing religious training or theological education is equally problematic. The Guard must make "contentious religious judgments" that raise "[t]he prospect of … litigating in court about what … [has] religious meaning." *Id.* at 1262, 1266 (quotation omitted). The First Amendment allows none of this.

F. Virginia can't satisfy strict scrutiny.

To satisfy strict scrutiny, Virginia must show that applying its religious exclusions to Plaintiffs advances highest-order interests and is narrowly tailored. *Carson*, 596 U.S. at 780. Virginia can do neither. There's no historic and substantial state interest in funding *some* religion degrees but not *others*. *Accord Fulton*, 593 U.S. at 542. Virginia's only interest is in pursuing greater church-state separation

than the Constitution requires. But that interest "cannot qualify as compelling" where Plaintiffs' First Amendment rights are "infringe[d]." *Carson*, 596 U.S. at 781 (quotations omitted).

Virginia's religious exclusions aren't narrowly tailored either. The Commonwealth indicts itself on this point. On one hand, the Guard deems VTAG's exclusion underinclusive. On the other, the State Council considers VANGSTAP's exclusion overinclusive. That no other state employs such conflicting scholarship-funding measures shows that "many other less restrictive rules" would work. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020) (per curiam).

II. Plaintiffs are experiencing irreparable harm.

Virginia is depriving Plaintiffs of thousands of dollars in grant funds. That harm is irreparable because Virginia will claim "sovereign immunity for any [*past*] monetary damages." *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021); *accord Mountain Valley Pipeline LLC v. W. Pocahontas Props. Ltd. P'ship*, 918 F.3d 353, 366 (4th Cir. 2019). A speedy injunction is necessary for Plaintiffs to receive *future* grants and avert the "risk of [additional] irreparable harm" caused by Virginia denying them additional "payments with no guarantee of eventual recovery." *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 765 (2021) (per curiam).

III. The public interest and balance of the equities favor Plaintiffs.

An injunction benefits Plaintiffs and the public while harming no one. Rulings that "uphold[ ] constitutional rights" serve "the public interest." *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013) (quotation omitted). And Virginia "is in no way harmed by issuance of [an] injunction which prevents the state from enforcing restrictions likely to be found unconstitutional." *Id.* (quotation omitted).

Because Plaintiffs seek the same grants available to everyone else, the equities also favor them. A few thousand dollars is life-changing for students. But it's of no consequence to Virginia, which pours millions into VTAG and VANGSTAP each year.

Because all four factors favor entering an injunction, Plaintiffs request that the Court enter an injunction and "waive a bond," as courts normally do "when constitutional rights are at issue and an improperly imposed injunction would not impose a substantial hardship on the government." *Cruz Medina v. Noem*, 806 F. Supp. 3d 536, 553 (D. Md. 2025).

CONCLUSION

For these reasons, the Court should grant the motion and issue the requested injunction pending appeal.

Dated: April 17, 2026

Respectfully submitted,

s/Rory T. Gray

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CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because it contains 5,200 words, excluding parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: April 17, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by that system.

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