

No. _____

IN THE
Supreme Court of the United States

CAMERON JOHNSON; LUKE THOMAS; TRACE STEVENS,
Petitioners,

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,
Respondents.

*On Petition for Writ of Certiorari Before Judgment
to the United States Court of Appeals for the Fourth
Circuit*

**PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGMENT**

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QUESTIONS PRESENTED

Petitioners Cameron Johnson, Luke Thomas, and Trace Stevens are Virginia residents eligible for grants funding study at private colleges in the Commonwealth. Virginia funds some religious degrees at Liberty University—the private college that Petitioners attend—but denies funding for Petitioners’ chosen religious degrees. Yet the favored and disfavored degrees are materially indistinguishable—they include similar religious courses and lead to both secular and religious careers. This results in arbitrary exclusions, state religiosity standards, and the indignity of unequal treatment because of one’s faith.

This religious discrimination violates the First Amendment. But the district court dismissed Cameron’s and Luke’s claims and denied Trace a preliminary injunction based on *Locke v. Davey*, 540 U.S. 712 (2004), holding that *Locke* bars *any* First Amendment challenge to *any* educational grant program that excludes some religious degrees, in conflict with a ruling by the Tenth Circuit. The Fourth Circuit then denied an injunction pending appeal and deferred a motion to accelerate, extending Petitioners’ ongoing and irreparable harm.

Excluding students based on their religious use of public benefits raises two issues of broad significance:

1. Whether the Religion Clauses allow governments to exclude some religious degrees while funding similar religious degrees in educational grant programs.
2. Whether this Court should overrule *Locke*.

PARTIES TO THE PROCEEDING

Petitioners Cameron Johnson, Luke Thomas, and Trace Stevens are individual Virginia residents.

Respondents are 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.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit, No. 26-1437, *Johnson v. Fleming*, motion for an injunction pending appeal denied May 18, 2026, and motion to accelerate the appeal deferred May 22, 2026.

U.S. District Court for the Eastern District of Virginia, No. 3:25-cv-407, *Johnson v. Fleming*, order dismissing Cameron Johnson's and Luke Thomas's claims and denying Trace Stevens a preliminary injunction March 31, 2026.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
LIST OF ALL PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	viii
DECISIONS BELOW.....	1
STATEMENT OF JURISDICTION	1
PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS	2
INTRODUCTION	3
STATEMENT OF THE CASE.....	6
I. Virginia’s grant programs	6
A. Virginia Tuition Assistance Grant Program..	6
B. Virginia National Guard State Tuition Assistance Program.....	11
II. Virginia denies Petitioners’ grant requests.....	13
A. Cameron Johnson.....	14
B. Luke Thomas	14
C. Trace Stevens	15
III.Procedural history	16
REASONS FOR GRANTING THE PETITION	17
I. The lower court’s ruling is manifestly wrong and conflicts with a decision by the Tenth Circuit.	18

A. <i>Locke</i> doesn't categorically bar all challenges to educational grants that exclude some religious degrees.	18
B. The lower court's application of <i>Locke</i> conflicts with the Tenth Circuit's ruling in <i>Colorado Christian University</i>	22
C. Under normal First Amendment rules, the constitutional violation is clear.	24
II. <i>Locke</i> should be overruled.	29
A. This Court's precedents have fatally undermined <i>Locke</i> 's flawed foundation.	29
B. Stare decisis is no impediment.	33
III. The students satisfy the other preliminary-injunction requirements.	35
IV. This case is an ideal vehicle.	36
V. Certiorari before judgment is warranted.	37
CONCLUSION.	38

APPENDIX TABLE OF CONTENTS

United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Memorandum Opinion Issued March 31, 2026	1a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Order Entered March 31, 2026	28a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Memorandum Order Denying Injunction Pending Appeal and Granting Stay Entered April 21, 2026.....	30a
United States Court of Appeals For the Fourth Circuit Case No. 26-1437 Order Denying Injunction Pending Appeal Entered May 18, 2026.....	34a
U.S. Const. amend. I	36a
U.S. Const. amend. XIV, § 1	36a
U.S. Const. art. VI, cl. 2	36a
Va. Const. art. IV, § 16.....	37a
Va. Const. art. VIII, § 10.....	37a
Va. Const. art. VIII, § 11.....	38a
Va. Code § 23.1-610.....	39a

Va. Code § 23.1-628.....	41a
Va. Code § 23.1-629.....	42a
Va. Code § 23.1-631.....	43a
Va. Code § 23.1-632.....	44a
8 Va. Admin. Code § 40-71-10	45a
8 Va. Admin. Code § 40-71-30	52a
8 Va. Admin. Code § 40-71-40	54a
United States District Court	
For the Eastern District of Virginia	
Case No. 3:25-cv-407	
Verified Complaint	
Filed May 28, 2025.....	61a
United States District Court	
For the Eastern District of Virginia	
Case No. 3:25-cv-407	
Virginia Tuition Assistance Grant Denial	
Email to Cameron Johnson	118a
United States District Court	
For the Eastern District of Virginia	
Case No. 3:25-cv-407	
Command Policy 22-023 Virginia National Guard	
State Tuition Assistance Program	120a
United States District Court	
For the Eastern District of Virginia	
Case No. 3:25-cv-407	
Adjutant General Letter to Trace Stevens.....	134a

United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Declaration of Cameron Johnson Filed June 27, 2025	136a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Declaration of Trace Stevens Filed June 27, 2025	142a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Declaration of Luke Thomas Filed June 27, 2025	151a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Supplemental Declaration of Trace Stevens Filed November 25, 2025	156a
United States District Court For the Eastern District of Virginia Case No. 3:25-cv-407 Supplemental Declaration of Luke Thomas Filed November 25, 2025	160a

TABLE OF AUTHORITIES

Cases

<i>Alabama Association of Realtors v. Department of Health and Human Services,</i> 594 U.S. 758 (2021).....	5, 35
<i>Carson v. Makin,</i> 596 U.S. 767 (2022).....	3, 24, 28, 30, 34–35
<i>Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission,</i> 605 U.S. 238 (2025).....	3–4, 27–28, 37
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,</i> 508 U.S. 520 (1993).....	26
<i>Colorado Christian University v. Weaver,</i> 534 F.3d 1245 (10th Cir. 2008).....	4, 22, 27–28, 34
<i>Dobbs v. Jackson Women’s Health Organization,</i> 597 U.S. 215 (2022).....	34
<i>Espinoza v. Montana Department of Revenue,</i> 591 U.S. 464 (2020).....	24–26, 30, 33–35
<i>Fulton v. City of Philadelphia,</i> 593 U.S. 522 (2021).....	27
<i>Galette v. New Jersey Transit Corporation,</i> 607 U.S. 509 (2026).....	35
<i>Griffin v. County School Board of Prince Edward County,</i> 377 U.S. 218 (1964).....	26
<i>Hall v. Fleming,</i> 175 F.4th 510 (4th Cir. 2026)	2, 5, 17, 23, 29–30, 33, 37

<i>Kennedy v. Bremerton School District</i> , 597 U.S. 507 (2022).....	26, 30–31
<i>Larson v. Valente</i> , 456 U.S. 228 (1982).....	28
<i>Locke v. Davey</i> , 540 U.S. 712 (2004).....	i, 3–5, 12, 18–23, 25, 29–32, 34
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024).....	33–34
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025).....	35
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026).....	37
<i>National Republican Senatorial Committee v.</i> <i>FEC</i> , 146 S. Ct. 2404 (2026).....	33–35
<i>New York v. Cathedral Academy</i> , 434 U.S. 125 (1977).....	28
<i>Polk v. Montgomery County Public Schools</i> , 166 F.4th 400 (4th Cir. 2026).....	2
<i>Trinity Lutheran Church of Columbia, Inc. v.</i> <i>Comer</i> , 582 U.S. 449 (2017).....	5–6, 24, 26, 30–33, 35, 37
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018).....	29
<i>Trump v. Slaughter</i> , 146 S. Ct. 2283 (2026).....	4, 33–34
<i>United States v. Raines</i> , 362 U.S. 17 (1960).....	35

<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020).....	18
<i>Waters v. Churchill</i> , 511 U.S. 661 (1994).....	21
<i>Whole Woman’s Health v. Jackson</i> , 595 U.S. 30 (2021).....	2

Statutes

28 U.S.C. 1254.....	2
28 U.S.C. 1292.....	1
28 U.S.C. 1331.....	1
28 U.S.C. 1343.....	1
28 U.S.C. 2101.....	2
28 U.S.C. 2201.....	1
28 U.S.C. 2202.....	1
42 U.S.C. 1983.....	1
Va. Code § 23.1-610.....	11
Va. Code § 23.1-628.....	7
Va. Code § 23.1-631.....	6–7

Constitutional Provisions

Va. Const. art. IV, § 16.....	25
Va. Const. art. VIII, § 10.....	25–26
Va. Const. art. VIII, § 11.....	25

Regulations and Rules

8 Va. Admin. Code § 40-71-10	7, 11, 26
8 Va. Admin. Code § 40-71-40	7
Sup. Ct. R. 11	5, 37

Other Authorities

1 <i>Report of the Proceedings & Debates of the Constitutional Convention of the State of Virginia (1901–02)</i> (Hermitage Press 1906)	25
56A <i>Chaplain</i> , ARMY NAT'L GUARD, perma.cc/YW7N-335E.....	13
<i>About IES</i> , INST. OF EDUC. SCIENCES, perma.cc/9SSH-NTKS	7
<i>Chaplain Support</i> , VA. NAT'L GUARD, perma.cc/3T2U-YQ35	13
<i>Comm'n on Constitutional Revision</i> , THE CONSTITUTION OF VA. (1969), perma.cc/6UWF-EEFQ.....	25
<i>Course Catalog – Religious Studies Major</i> , VA. UNION UNIV., perma.cc/PNM2-3YYA.....	8
<i>Detail for CIP Code 38</i> , NCES, perma.cc/ESD9- LZTZ.....	7–8
<i>Detail for CIP Code 38.0203</i> , NCES, perma.cc/K4V9-MWZ9.....	9
<i>Detail for CIP Code 39</i> , NCES, perma.cc/CD9T- 8B8Q.....	7–8
<i>Detail for CIP Code 39.0201</i> , NCES, perma.cc/89Z9-V3VC	9

<i>Emp. Outcomes – Earnings, Va. Insts., STATE COUNCIL FOR HIGHER ED. OF VA.,</i> <i>bit.ly/4emSA6C</i>	10
<i>Introduction to the Classification of Instructional Programs: 2020 Edition (CIP-2020), NCES,</i> <i>perma.cc/549R-8G2C</i>	8
<i>Liberty Hall History, WASHINGTON & LEE UNIV.,</i> <i>perma.cc/ZM8X-W8SF</i>	32
<i>Mark Storslee, Church Taxes & the Original Understanding of the Establishment Clause,</i> <i>169 U. PA. L. REV. 111 (2020).....</i>	32
<i>Music (BA), BLUEFIELD UNIV., perma.cc/VW7M-HXBS.....</i>	9
<i>Nathan S. Chapman & Michael W. McConnell, Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience (2023).....</i>	32
<i>Religion and the Founding of the Am. Republic,</i> <i>LIBRARY OF CONGRESS, perma.cc/BV94-SXGX..</i>	21
<i>Religious Leadership & Ministry (Minor), MARY BALDWIN UNIV., perma.cc/D3ZE-TYDF</i>	11
<i>Thomas C. Berg & Douglas Laycock, The Mistakes in Locke v. Davey and the Future of State Payments for Services Provided by Religious Institutions, 40 TULSA L. REV. 227 (2004).....</i>	33
<i>Va. Tuition Assistance Grant Program, STATE COUNCIL OF HIGHER EDUC. FOR VA.,</i> <i>perma.cc/PN4N-VM45</i>	6–7

<i>VANGSTAP Summary</i> , VA. NAT'L GUARD, perma.cc/7EC5-TEDK	11
<i>VTAG and Other Virginia State Aid – Religious Undergraduate Degree Programs</i> , LIBERTY UNIV., bit.ly/4eP2ePV	9

DECISIONS BELOW

The district court's March 31, 2026, unreported order dismissing Petitioners Cameron Johnson's and Luke Thomas's claims and denying Petitioner Trace Stevens a preliminary injunction is available at 2026 WL 915533 and reprinted at App.1a–27a.

The district court's April 21, 2026, unreported order denying an injunction pending appeal and staying the proceedings is reprinted at App.30a–33a.

The Fourth Circuit's May 18, 2026, unreported order denying an injunction pending appeal is reprinted at App.34a–35a.

STATEMENT OF JURISDICTION

On May 28, 2025, Cameron, Luke, and Trace challenged Virginia's religious discrimination in two educational grant programs under 42 U.S.C. 1983 and the First Amendment's Religion Clauses. They also sought a preliminary injunction. The district court had jurisdiction under 28 U.S.C. 1331 and 1343, and authority to issue declaratory and injunctive relief under 28 U.S.C. 1331 and 2201–02.

On March 31, 2026, the U.S. District Court for the Eastern District of Virginia dismissed Cameron's and Luke's claims and denied Trace a preliminary injunction. Nine days later, the students filed a notice of appeal. The U.S. Court of Appeals for the Fourth Circuit has jurisdiction over this interlocutory appeal under 28 U.S.C. 1292(a)(1).

Because awarding a preliminary injunction on Cameron's and Luke's dismissed claims would necessitate reinstating those claims, the Fourth Circuit

and this Court have pendent jurisdiction to review the dismissal of Cameron’s and Luke’s claims. *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 38 (2021) (courts have jurisdiction over the order appealed and rulings inextricably intertwined with it); *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 411 (4th Cir. 2026) (same).

This Court has appellate jurisdiction under 28 U.S.C. 1254(1) and 2101(e). Each semester that Petitioners’ constitutional rights are violated, they are forced to pay thousands more in tuition expenses than their peers—past damages that are unrecoverable due to sovereign immunity. Therefore, they file this petition under this Court’s Rule 11 and 28 U.S.C. 2101(e) before the Fourth Circuit has ruled and while a petition is pending before this Court in a related case out of the Fourth Circuit, see Pet. for Cert., *Hall v. Fleming*, No. 26-193 (seeking review of *Hall v. Fleming*, 175 F.4th 510 (4th Cir. 2026)). Because the Fourth Circuit briefing in this case is complete, and the students have asked the Fourth Circuit to forego oral argument and expedite its ruling, it is likely that the Fourth Circuit will issue its opinion before the Court considers this petition. Regardless, this petition warrants the Court’s review and resolution before the end of the 2026 Term.

PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The relevant constitutional provisions, statutes, and regulations appear at App.36a–60a.

INTRODUCTION

Virginia deprives Petitioners Cameron Johnson, Luke Thomas, and Trace Stevens of educational grants worth thousands of dollars per year based solely on their chosen religious degrees, even though the Commonwealth funds other religious degrees. This violates the First Amendment’s Religion Clauses by punishing students’ “religious use of [public] benefits,” engaging in “denominational favoritism,” and excessively “entangl[ing]” the Commonwealth in religious questions. *Carson v. Makin*, 596 U.S. 767, 787, 789 (2022).

Yet the district court upheld the two funding programs that inflict this religious discrimination, relying only on *Locke v. Davey*, 540 U.S. 712 (2004). The court went so far as to say that *Locke* categorically bars *any* challenge under the Religion Clauses to educational-grant programs that exclude *some* religious degrees. The Fourth Circuit then refused, without explanation, to stop Virginia’s unequal treatment.

The lower court’s ruling transforms *Locke* into a license for States to violate the Religion Clauses. And that is precisely what Virginia has done—applying contradictory religious exclusions in its grant programs, preferring some religious degrees over others, and imposing government religiosity standards despite the First Amendment’s ban on States “favor[ing] some denominations over others.” *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 252 (2025).

Locke justifies none of this religious discrimination. It merely “uph[eld] the Promise Scholarship Program *as [then] operated* by the State of Wash-

ington.” *Locke*, 540 U.S. at 725 (emphasis added). Virginia’s arbitrary programs are quite different, and the state constitutional basis for Virginia’s religious exclusions is not “historic and substantial.” *Ibid.* The lower court ignored these differences in conflict with the Tenth Circuit’s view that *Locke* “does not imply that [S]tates are free to discriminate in funding against religious [education] however they wish.” *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1255–56 (10th Cir. 2008).

If *Locke* is read to approve Virginia’s discriminatory programs, this Court should overrule it. From the outset, *Locke* was wrong. The First Amendment has always barred religious discrimination in generally available public benefit programs. *Locke*, 540 U.S. at 726–27 (Scalia, J., dissenting). Since then, the Court has “undermined [*Locke*’s] premises at every turn. To persist in [*Locke*] would require [this Court] to depart from almost every case on the [Religion Clauses it has] decided since.” *Trump v. Slaughter*, 146 S. Ct. 2283, 2303 (2026). Nothing in the Religion Clauses justifies punishing students of “strong” faith who prepare for potential service in “ministry”—much less subjecting them to the “indignity of being singled out for special burdens” because of their faith. *Locke*, 540 U.S. at 731, 733 (Scalia, J., dissenting).

This case is an ideal vehicle. Virginia funds *some* religious degrees but not *others*, which “differentiates between religions along theological lines,” *Catholic Charities*, 605 U.S. at 248, effectively “impos[ing] a special tax” on religious activity the Commonwealth disfavors, *Locke*, 540 U.S. at 727 (Scalia, J., dissenting). And overruling *Locke* will halt “facial discrimination against religion,” *id.* at 731, which is forbidden

in all other contexts, e.g., *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 468 (2017) (Thomas, J., concurring in part).

Time is of the essence. Petitioners pay thousands more for their education each year because of their religious exercise, losing “a public benefit for which [they are] otherwise qualified solely because” of their faith. *Id.* at 467. And beyond this “concrete harm,” every day they suffer the “profound” “indignity” of enduring discriminatory exclusion for their faith. *Locke*, 540 U.S. at 731 (Scalia, J., dissenting). All this harm is irreparable because it involves the violation of First Amendment rights and sovereign immunity bars recovery for damages. *Alabama Ass’n of Realtors v. Department of Health and Hum. Servs.*, 594 U.S. 758, 765 (2021) (per curiam) (“irreparable harm” exists when there’s “no guarantee of eventual recovery”).

A few months ago, the Fourth Circuit rejected a related challenge to one of the two grant programs at issue here, see *Hall v. Fleming*, 175 F.4th 510 (4th Cir. 2026), and a petition for a writ of certiorari has been filed in that case, Pet. for Cert., *Hall v. Fleming*, No. 26-193. Meanwhile, in this case, the Fourth Circuit has refused an injunction pending appeal and deferred a request to expedite. Because the Fourth Circuit has already held that *Locke* controls the related challenge in *Hall*, the students have filed this petition under this Court’s Rule 11 before the Fourth Circuit has ruled. The issues raised here—facial religious exclusion from a generally available public benefit program—are “of such imperative public importance” that they justify the “immediate” intervention of this Court. Sup. Ct. R. 11.

In short, Virginia has doubled down on religious discrimination and a boundless reading of *Locke*. Absent this Court’s intervention, Virginia will continue to disfavor religious people and refuse to value Cameron, Luke, and Trace as “member[s] of the community” worthy of the same benefits enjoyed by their peers. *Trinity Lutheran*, 582 U.S. at 463. Certiorari is warranted.

STATEMENT OF THE CASE

I. Virginia’s grant programs

Virginia applies conflicting religious exclusions to the two educational grant programs at issue here: the Virginia Tuition Assistance Grant Program (VTAG) for students at private institutions in the Commonwealth; and the Virginia National Guard State Tuition Assistance Program (VANGSTAP) for National Guard members who study at in-state public or private schools.

A. Virginia Tuition Assistance Grant Program

VTAG is available to “Virginia students ... obligated to pay tuition as full-time undergraduate, graduate, or professional students.” Va. Code § 23.1-631(A). Most undergraduates receive \$5,250 annually. *Va. Tuition Assistance Grant Program*, STATE COUNCIL OF HIGHER EDUC. FOR VA., perma.cc/PN4N-VM45 (VTAG Summary). So over “four academic years,” VTAG provides generally available benefits worth up to \$21,000. Va. Code § 23.1-631(B).

VTAG is administered by the State Council of Higher Education for Virginia. To access the funding, students must satisfy two primary requirements.

First, students must attend “an eligible institution,” defined as “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). Here, the students attend Liberty University, which is an eligible institution. VTAG Summary, *supra* (listing eligible institutions).

Second, students must study “in an eligible program,” 8 Va. Admin. Code § 40-71-40(C)(2), which includes “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). The State Council narrows this exclusion to “CIP [Classification of Instructional Programs] Code 39-series programs,” 8 Va. Admin. Code § 40-71-10, outlined by the National Center for Education Statistics (NCES), an arm of the U.S. Department of Education. *About IES*, INST. OF EDUC. SCIENCES, perma.cc/9SSH-NTKS.

CIP Code 39-series majors that Virginia won’t fund include Bible/Biblical Studies, Religious Education, Religious/Sacred Music, and Pastoral Studies/Counseling. *Detail for CIP Code 39*, NCES, perma.cc/CD9T-8B8Q. In contrast, CIP Code 38-series majors—which Virginia *will* fund through VTAG—include Philosophy and Religious Studies, Religion/Religious Studies, and Christian Studies. *Detail for CIP Code 38*, NCES, perma.cc/ESD9-LZTZ.

Five key features highlight the arbitrariness of VTAG’s reliance on the CIP Code.

First, NCES never intended the CIP Code to be “a regulatory device” or to serve as “a prescriptive list of officially recognized ... programs.” *Introduction to the Classification of Instructional Programs: 2020 Edition (CIP-2020)* at 1, NCES, perma.cc/549R-8G2C. The CIP Code lists “general categories” for data placement that are used to track and report “fields of study and program completions.” *Ibid.* It does not purport to “exact[ly] duplicate[] ... a specific major or field of study.” *Ibid.*

Second, CIP Code 38-series majors and 39-series majors are both inherently religious. Yet VTAG includes the former, which is supposedly more concerned with “systems of belief” and “academic study,” *Detail for CIP Code 38*, NCES, perma.cc/ESD9-LZTZ, while excluding the latter, which is allegedly focused on specific “theolog[ies]” and “religious vocations,” *Detail for CIP Code 39*, NCES, perma.cc/CD9T-8B8Q.

Students pursuing an eligible CIP Code 38-series major—just like those seeking an ineligible 39-series major—receive religious training or theological education that might (or might not) lead to professional ministry. Take Virginia Union University’s VTAG-eligible Code 38-series Religious Studies program, which prepares students “for ... ministerial studies” or “to pursue religious vocations (i.e. youth ministers, pastoral assistance, associate ministers, etc).” *Course Catalog – Religious Studies Major* at 49, VA. UNION UNIV., perma.cc/PNM2-3YYA. Or consider Bluefield University’s VTAG-eligible Code 38-series Music program, which allows students to “focus on ... church

music” and prepares them “for a professional vocational music ministry in the church.” *Music (BA)*, BLUEFIELD UNIV., perma.cc/VW7M-HXBS. Accord C.A.Opening.Br.16–17 (discussing other examples).

Third, the content of CIP Code 38-series majors and 39-series majors is materially indistinguishable. For example, there is no functional difference between a VTAG-eligible Code 38.0203 program that “focuses on the philosophy and teachings of Jesus Christ and his apostles,” including “instruction in Christian sacred scripture,” *Detail for CIP Code 38.0203*, NCES, perma.cc/K4V9-MWZ9, and a VTAG-ineligible Code 39.0201 program that “focuses on the Christian ... Bible ... with an emphasis on understanding and interpreting [its] theological, doctrinal, and ethical messages,” *Detail for CIP Code 39.0201*, NCES, perma.cc/89Z9-V3VC.

Liberty University’s degree catalog further illustrates the point. While “Christian Studies” is VTAG eligible, “Biblical Studies” is not. *VTAG and Other Virginia State Aid – Religious Undergraduate Degree Programs*, LIBERTY UNIV., bit.ly/4eP2ePV (listing “Eligible Programs” and “Ineligible Programs”). And while VTAG funds majors in “Religion: Christian Ministries” and “Religion: Evangelism,” it excludes majors in “Youth Ministries: Sport Outreach” and “Music and Worship: Worship Tech.” *Ibid.* These distinctions are arbitrary.

Indeed, the course requirements for Code 38-series majors and Code 39-series majors often overlap. C.A.J.A.197–204 (showing Code 38-series majors and Code 39-series majors with very similar course requirements). To illustrate, Liberty’s Code 38-series

“Biblical Studies” major and Code 39-series “Applied Ministry” major both require the following classes: Intro to Biblical Worldview; Evangelism and the Christian Life; Old Testament Survey; New Testament Survey; and Theology Survey. C.A.J.A.200–201. In fact, the eligible Code 38-series “Biblical Studies” major requires courses on The Church and its Mission and on books of the Bible like Genesis and Romans, whereas the ineligible Code 39-series “Applied Ministry” major requires nine credits in “*Non-Divinity*” classes and allows for more electives. *Id.* at 201 (emphasis added).

Fourth, most students who obtain Code 39-series degrees take *secular* jobs instead of entering professional ministry. So VTAG’s religious exclusion doesn’t effectively target future clergy. It merely punishes students with strong personal faith by denying them a public benefit available to their peers.

Virginia’s own data shows this: Liberty graduates from 2016 to 2018 with a Code 39-series major designation of “Theology and Religious Vocations” overwhelmingly reported secular, not religious, employment a year later. *Emp. Outcomes – Earnings, Va. Insts.*, STATE COUNCIL FOR HIGHER ED. OF VA., bit.ly/4emSA6C.*

Finally, in some circumstances, VTAG does in fact fund religious studies in CIP Code 39-series programs. Strangely, students who “double-major” in a

* To access this data, select “Liberty University,” “Four-Year Bachelor’s Degree,” “Theology and Religious Vocations,” “2016-2018 cohort,” and “1 year” postgrad. “Employment by Industry” then appears on the bottom.

Code 39-series major and a secular major that requires “an equal or greater number of courses” as the Code-39 major are VTAG eligible. 8 Va. Admin. Code § 40-71-10. So are students who minor in a Code 39-series program, even if that program “prepar[es] [them] for religious leadership” or “formal training in ... seminaries.” *Religious Leadership & Ministry (Minor)*, MARY BALDWIN UNIV., perma.cc/D3ZE-TYDF; accord 8 Va. Admin. Code § 40-71-10 (regulating only “eligible major[s] or concentration[s]” within a major).

B. Virginia National Guard State Tuition Assistance Program

VANGSTAP is available to Virginia National Guard members enrolled and in good standing at in-state colleges, provided they have “a minimum remaining obligation of two years,” complete their “initial active duty service,” and perform their duties in a “satisfactor[y]” manner. Va. Code § 23.1-610(A). VANGSTAP provides Guard members between \$4,500 and \$10,000 a semester, depending on participation and funding. *VANGSTAP Summary*, VA. NAT’L GUARD, perma.cc/7EC5-TEDK.

VANGSTAP is overseen by the Adjutant General of Virginia. The program has two major conditions.

First, Guard members must attend a public institution or “nonprofit” private school “whose primary purpose is to provide collegiate or graduate education and not to provide *religious training or theological education*.” Va. Code § 23.1-610(A) (emphasis added). Liberty University is a grant-eligible institution.

Second, the Guard excludes religious majors. Via a command policy, the Adjutant General says VANGSTAP won't fund "theological degrees" or "seminary school." C.A.J.A.99; accord *id.* at 108. The promissory note that Guard members must sign to receive VANGSTAP clarifies that "degrees in *religious training or theological education*" are ineligible. *Id.* at 120 (all caps omitted; emphasis added); accord *id.* at 123. And the Guard instructs members that "religious degrees" or "religious studies" are excluded, *id.* at 152, 154, though VANGSTAP may "pay for a particular religious 'required' course for another type of degree," *id.* at 110. The plain import of this language is that all religious majors are forbidden. (Virginia argued below that not all religious degrees are excluded but has identified none that qualify. C.A.Resp.Br.35.)

The Guard does not have a command policy establishing standards for what qualifies as an excluded decree. *Ibid.* But Virginia disclosed two factors below: (1) whether a "school of divinity" offers the major; and (2) whether Guard members pledge that the program isn't "religious training or theological education." *Id.* at 14, 36. Virginia has backtracked from the first, saying the Guard "does not limit ineligible programs ... to those offered through divinity schools." *Id.* at 35. And the second is an unconstitutional condition, which *Locke* itself seemingly disapproves. 540 U.S. at 717 n.1 ("The State does not require students to certify anything or sign any forms.").

Even when a private institution classifies a religious major as non-devotional under the CIP Code, the Guard reviews how the "institution structures [the] program[]," C.A.Resp.Br.40, and will reject the institution's decision, *id.* at 14, 37. So Guard officials

have unbridled discretion to declare religious majors ineligible on a case-by-case basis.

Ironically, VANGSTAP bans religious majors that directly further the Guard's own operations. The Guard has an official Chaplains Office, which provides "religious support" to members and is led by a "State Chaplain" who holds the rank of colonel and earns commensurate pay. *Chaplain Support*, VA. NAT'L GUARD, perma.cc/3T2U-YQ35. Guard chaplains must possess a bachelor's and master's degree that includes 36 semester hours in theology. *56A Chaplain*, ARMY NAT'L GUARD, perma.cc/YW7N-335E. And the Guard operates a Chaplain Candidate Program "designed for religious ministry students" who are "still in school." *Ibid.* A few weeks ago, Trace commissioned as a Second Lieutenant in the Guard as a Chaplain Candidate. Yet VANGSTAP won't fund the study necessary for Trace to meet the requirements of the Chaplain Candidate Program.

The Guard is aware that the State Council of Higher Education funds some religious majors through VTAG grants. But the Guard has refused to do likewise, stating that "VTAG[] is managed by another organization within the State government that [the Guard] has nothing to do with," C.A.J.A.123, and the two "separate grant program[s] ... do not work together," *id.* at 125.

II. Virginia denies Petitioners' grant requests.

Virginia denies VTAG grants to Cameron Johnson and Luke Thomas, and it refuses VANGSTAP grants to Trace Stevens, denying them public benefits based solely on their religious exercise.

A. Cameron Johnson

Cameron Johnson is a lifelong Virginian and Christian of the Baptist denomination who is an upcoming sophomore at Liberty University. App.67a, 77a. He believes that every Christian must share their faith with others, though Cameron doesn't yet know if God will call him to a religious vocation or a secular career. But he feels led to pursue an undergraduate degree in Pastoral Leadership at Liberty University to develop his leadership skills, lay a foundation for graduate school, and leave the door open to vocational ministry. App.77a–79a, 137a–39a. Cameron also has an interest in pursuing real estate or leading a community-building nonprofit, so he plans to minor in business. App.79a, 138a.

Cameron submitted a VTAG application to Liberty's financial-aid office before his first year, but it was denied because Pastoral Leadership is "a CIP code 39 program." App.118a; accord App.79a–80a, 138a–40a.

B. Luke Thomas

Luke Thomas has lived in Virginia his whole life. App.67a. He is a non-denominational Christian who believes that every believer must tell others about their faith, regardless of their occupation. Luke is passionate about music and serves on his church's worship team. App.81a, 152a. He believes that God gave him musical talent to minister to people, either as a worship leader or commercial singer/songwriter. Regardless of where God leads him, Luke has an interest in starting a small business and plans to do so someday. App.81a–82a, 152a–55a.

Luke is an upcoming sophomore at Liberty University who plans to major in Music and Worship, a CIP Code 39-series program that VTAG excludes. App.82a–83a, 153a–54a. He initially declared a Music Vocal major to begin taking required instrument classes and temporarily preserve his VTAG grant. But Luke ultimately intends to major in Music and Worship and must declare that major after a few more semesters to access other required coursework. As soon as Luke does this, his VTAG grant will disappear. App.83a, 154a–55a, 161a–62a.

C. Trace Stevens

Trace Stevens is a longtime Virginia resident and Christian of the Assemblies of God denomination who believes God is calling him to prepare for the ministry. App.67a, 88a–89a, 143a. When a Virginia National Guard recruiter told Trace that VANGSTAP would help pay for his education, he joined the Guard only to learn later that VANGSTAP excludes religious degrees, though federal Army grants offer some help. App.89a–90a, 99a, 143a–45a.

Given the National Guard recruiter’s error, Trace asked the Governor’s office for an exception to VANGSTAP’s religious exclusion. App.145a. But the Adjutant General declared his undergraduate “theological degree program ... ineligible.” App.134a; accord App.90a, 145a. When Trace explained that his Religion (General Track) degree at Liberty University was CIP Code 38-series and qualified for VTAG, the Guard said that was irrelevant and reaffirmed the denial. App.93a–94a, 147a–49a; C.A.J.A.123.

In undergrad, Trace was a Guard Specialist with a Bachelor of Science in Religion that is VTAG *eligible* but VANGSTAP *ineligible*. App.91a, 142a, 146a–50a. He then enrolled in Liberty’s Master of Divinity program, which is also VANGSTAP ineligible; he did so to become a commissioned officer and Guard chaplain. App.150a, 157a–58a.

Over the years, Trace has struggled to cover his educational expenses. App.99a, 149a. In fact, he had to postpone his studies during the fall 2025 semester because of a debt that VANGSTAP should have paid. App.157a–58a.

Recently, Trace commissioned as a Second Lieutenant. He is now a Guard Chaplain Candidate. Trace continues paying for tuition expenses that VANGSTAP would cover but for the program’s religious discrimination. App.157a–58a.

III. Procedural history

The students filed suit in the U.S. District Court for the Eastern District of Virginia, alleging that Virginia’s grant programs violate the Religion Clauses by (1) excluding them from generally available public benefits, (2) violating principles of neutrality and general applicability, (3) favoring certain denominations, and (4) causing excessive entanglement. App.104a–111a. The students also moved for a preliminary injunction. C.A.J.A.158–230.

Nearly eight months after briefing completed, the district court denied a preliminary injunction and dismissed Cameron’s and Luke’s claims. App.27a–28a. The court reasoned 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.” App.11a. The court “suspect[ed] that *Locke* also dooms [Trace’s] claims against the administrators of [VANGSTAP]” but declined to dismiss his claims because of “the limited factual record.” *Ibid.*

The students filed a timely notice of appeal and requested an injunction pending appeal from the district court. The court denied their motion but granted the parties’ request to stay the proceedings during the interlocutory appeal. App.31a–32a.

The students also filed a motion for injunction pending appeal in the Fourth Circuit, arguing that *Locke* is distinguishable and preserving the argument that *Locke* should be overruled. But that court denied the request in a one-sentence order with no explanation. App.34a–35a. So the students moved to expedite their appeal and waive oral argument. The Fourth Circuit deferred ruling on that request. The case is now fully briefed before the Fourth Circuit.

REASONS FOR GRANTING THE PETITION

Virginia says that *Locke* allows it to discriminate against religion and distinguish between religious degrees within its generally available grant programs. The district court ratified that position. And when the Fourth Circuit faced a related First Amendment challenge to VTAG’s religious exclusion in *Hall*, it characterized *Locke* as governing *any* case in which a student brings claims under “the Free Exercise Clause” against the exclusion of some religious “vocation[al]” majors from a government’s “tuition grant” program. 175 F.4th at 514. Subsequently, the Fourth

Circuit denied the students here an injunction pending appeal in a one-sentence order. App.34a–35a.

Virginia continues to invite the Fourth Circuit to broadly read *Locke* and perpetuate the unequal treatment of religious people. Given the straightforward First Amendment violations and irreparable injury to the students, this Court should grant the petition and decide the future of *Locke* without delay.

I. The lower court’s ruling is manifestly wrong and conflicts with a decision by the Tenth Circuit.

A. *Locke* doesn’t categorically bar all challenges to educational grants that exclude some religious degrees.

The district court deemed *Locke* “too analogous ... to meaningfully distinguish” and refused to “analyze every religious freedom case raised by Plaintiffs,” simply holding that “*Locke* is good law that renders the VTAG Program constitutional.” App.14a, 17a. And the court announced that the VANGSTAP Program is likely constitutional for the same reason. App.26a. So the lower court declared *Locke* a categorical bar foreclosing First Amendment challenges to educational grants that exclude some religious degrees. Only this Court can decide whether *Locke*’s rule extends that far.

Locke didn’t go as far as the lower court said. The decision merely “uph[eld] the Promise Scholarship Program *as [then] operated* by the State of Washington,” 540 U.S. at 725 (emphasis added), after considering the “questions presented by the parties,” *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020)

(quotation omitted). Virginia’s two grant programs operate differently from Washington’s—and from each other. And here, the students’ claims are largely based on precedent that didn’t exist when *Locke* was decided. So the district court was wrong to apply *Locke*’s rule in this case.

By its own terms, *Locke* rejects extending precedent “well beyond ... [its] facts ... [and] reasoning.” 540 U.S. at 720. The lower court flouted this principle in three ways.

First, *Locke*’s facts are distinguishable. Washington uniformly excluded “devotional theology” degrees from its grant program, allowed each “institution” to “determine[] whether the student’s major is devotional” under its own religious principles, and made no exception for secular double majors. *Id.* at 717.

Compare this to VTAG. That program draws an incoherent line between equally religious CIP Code 38-series (which qualify for a grant) and 39-series majors (which don’t) based on government-imposed religious criteria. VTAG excludes those called to pursue Code 39-series majors, even though Code 38-series majors also prepare students for religious ministry and are largely indistinguishable from Code 39-series majors in substance. *Supra* pp. 7–10. And under VTAG’s secular-double-major exception, Virginia would have granted funding to the plaintiff in *Locke*—Joshua Davey—because he “double major[ed] in ... business management/administration,” *Locke*, 540 U.S. at 717; accord *supra* p. 10–11.

Next consider VANGSTAP. It appears to exclude all—or nearly all—“religious studies,” C.A.J.A.152, not just programs that are “devotional in nature or

designed to induce religious faith,” *Locke*, 540 U.S. at 716 (quotation omitted). Unlike Washington’s grant, VANGSTAP’s hard line against people of faith doesn’t go “a long way toward including religion in its benefits.” *Id.* at 724. Even accepting Virginia’s word that some religious majors qualify, VANGSTAP subjects Guard members to a standardless regime under which officials exclude religious majors on a case-by-case basis, which is entirely unlike *Locke*.

Zooming out enhances the factual difference. *Locke* considered *one* grant program and *one* prohibition involving “a distinct category of [religious] instruction,” 540 U.S. at 721, not *two* grant programs with *conflicting* religious exclusions. Compare Cameron and Trace: both chose religious majors that could lead to religious ministry or secular careers. But Cameron’s Pastoral Leadership major is VTAG *ineligible*, whereas Trace’s Religion (General Track) major was VTAG *eligible*. And yet Trace, as a Guard member, was denied VANGSTAP grants while civilians in his same undergraduate program received VTAG grants. *Supra* pp. 14–16.

Second, *Locke*’s reasoning is not controlling. *Locke* turned on Washington’s allegedly historic interest in not “supporting the clergy.” 540 U.S. at 723. That interest applied because Davey told the Court—based on his then-existing plans—that his “only reason” for pursuing “a college degree” was to become a “church pastor,” and *Locke* viewed “[t]raining someone [intent on] lead[ing] a congregation” as akin to “support[ing] church leaders.” *Id.* at 717, 721–22.

That logic doesn't apply here. Cameron and Luke aren't intent on becoming church leaders; they are interested in both secular jobs *and* professional ministry. *Supra* pp. 14–15. Unlike Davey, Cameron and Luke presented evidence that religious degrees prepare them for both types of pursuits and that secular employment is more likely. *Supra* pp. 10. So Virginia's purportedly historic interest has no clear relevance, especially as VTAG funds other religious majors that equally prepare students for potential ministry. *Supra* pp. 8–11.

Nor is *Locke's* reasoning applicable to Trace's pursuit of a Master of Divinity to become a Guard chaplain. *Locke* didn't consider the military context. And the history there is clear: early Americans supported military chaplains. The Continental Congress authorized them to be paid the same rate as majors. *Religion and the Founding of the Am. Republic*, LIBRARY OF CONGRESS, perma.cc/BV94-SXGX. Yet Trace is excluded from VANGSTAP even after becoming a Chaplain Candidate.

What's more, the plaintiff in *Locke* failed to "establish[] a credible connection between the Blaine Amendment" and the state constitutional provision at issue there. 540 U.S. at 723 n.7. Here, however, the students have drawn a direct connection between the Blaine Amendment and Article VIII, § 11 of the Virginia Constitution. *Infra* pp. 25–26. That makes "the Blaine Amendment's history" relevant. *Locke*, 540 U.S. at 723 n.7.

Third, *Locke* can't "foreclos[e] ... argument[s] that [it] never dealt with." *Waters v. Churchill*, 511 U.S. 661, 678 (1994). Davey argued that excluding "voca-

tional religious instruction alone is inherently constitutionally suspect.” *Locke*, 540 U.S. at 725. And while the Court rejected this “presumption of unconstitutionality,” it didn’t “venture further” into the “Religion Clauses ... to uphold” Washington’s program. *Ibid.*

But here, the students contend that Virginia’s grant programs violate the Religion Clauses based largely on caselaw that didn’t exist when *Locke* was decided. *Infra* Part I.C. This recent precedent requires stepping deeper into the Religion Clauses than *Locke* did.

B. The lower court’s application of *Locke* conflicts with the Tenth Circuit’s ruling in *Colorado Christian University*.

The lower court’s extension of *Locke* to any exclusion of religious study from any educational grant program conflicts with the Tenth Circuit’s ruling in a similar case, *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008). The students cited that case below, but the lower court ignored it.

In *Colorado Christian University*, Colorado defended a grant program that excluded “pervasively sectarian” schools. *Id.* at 1250. Like Virginia, the crux of Colorado’s defense was a broad reading of *Locke*—specifically, “that *Locke* subjects all state decisions about funding religious education to no more than rational basis review.” *Id.* at 1254–55 (quotation omitted). That echoes Virginia’s claim that *Locke* allows States to “constitutionally deny taxpayer funding for religious vocational training programs” no matter the circumstance. C.A.Resp.Br.40.

The Tenth Circuit rejected that position. *Locke*, the court said, “does not imply that states are free to discriminate in funding against religious [education] however they wish.” 534 F.3d at 1256. Though *Locke* “indicated that the State has greater latitude to discriminate in decisions about the use of tax dollars than in its use of regulatory authority,” *Locke* “did not overrule any prior cases subjecting funding decisions to constitutional scrutiny.” *Id.* at 1255. So in appropriate circumstances, regular First Amendment rules apply because “the State’s latitude with respect to funding decisions has limits.” *Ibid.*

The Tenth Circuit identified two factors “that were not present in *Locke*,” “offend longstanding constitutional principles,” and trigger normal First Amendment rules. *Id.* at 1256. According to that court, *Locke* doesn’t apply when state grant programs (1) “discriminate among religions” or (2) “entail intrusive governmental judgments regarding matters of religious belief and practice.” *Ibid.* Because Virginia’s grants do both, *infra* pp. 27–28, the Tenth Circuit would not apply *Locke* here.

Yet the district court did so for no persuasive reason, and the Fourth Circuit in *Hall* took a similarly expansive view of *Locke*. E.g., *Hall*, 175 F.4th at 513 (calling *Locke* “a seminal ... case on the relationship between the Free Exercise Clause ... and state educational scholarship programs”). So far in this case, the Fourth Circuit has declined to express a different view.

Only this Court may authoritatively determine *Locke*’s scope and resolve the divide in the lower courts. That is reason enough to grant the petition.

**C. Under normal First Amendment rules,
the constitutional violation is clear.**

Once *Locke* is set to the side, this case is straightforward. Virginia’s religious exclusions violate normal First Amendment rules in at least four ways.

First, Virginia’s grants discriminate based on religious character, use, and activity. In a recent trilogy of cases, this Court clarified that States cannot force people of faith to “disavow [their] religious character” to “participate in a government benefit program,” *Trinity Lutheran*, 582 U.S. at 463, forbid grant recipients “from putting aid to religious uses,” *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 478 (2020), or exclude citizens “from an otherwise generally available public benefit because of their religious exercise,” *Carson*, 596 U.S. at 781. But Virginia does all this.

Virginia denied Cameron, Luke, and Trace grants based on the intensity and character of their religious beliefs, as reflected by their chosen degrees. Virginia deems their religious majors not “secularly[] focused” enough. C.A.Resp.Br.52–53. So the Commonwealth excludes “religious vocational training,” *Id.* at 51–53, to prevent students “from putting aid to [a] religious use[],” *Espinoza*, 591 U.S. at 478. That “effectively penalizes” students for taking their faith seriously enough to consider a career in ministry and “indirect[ly] coerc[es]” them to moderate their beliefs and pursue less meaningful religious study. *Trinity Lutheran*, 582 U.S. at 462–63 (citation modified). By “exclud[ing] otherwise eligible [students] on the basis of their religious exercise,” Virginia violates the First Amendment. *Carson*, 596 U.S. at 781, 789.

Second, Virginia’s grant programs aren’t neutral or generally applicable. The religious exclusions are not neutral because they’re based on state constitutional provisions “credibl[y] connect[ed]” to the federal Blaine Amendment, *Locke*, 540 U.S. at 723 n.7, which “was born of bigotry and arose [from] pervasive hostility” to Catholicism. *Espinoza*, 591 U.S. at 482 (citation modified).

To trace the connection, start with Article VIII, § 11 of the Virginia Constitution, which bars grants for “religious training or theological education.” This was intended to avoid “weakening the wall of separation between church and state ... erected in *other sections of the Constitution*.” *Comm’n on Constitutional Revision*, THE CONSTITUTION OF VA. 274 (1969), perma.cc/6UWF-EEFQ (emphasis added). By “other sections,” the drafters meant Article IV, § 16 and Article VIII, § 10. *Id.* at 101 n.38, 271–72.

The first of those provisions—Article IV, § 16, which forbids granting funds “to any church or sectarian society,” using Blaine’s “bigoted [sectarian] code language,” *Espinoza*, 591 U.S. at 501 (Alito, J., concurring)—has its roots in Blaine’s anti-Catholic bigotry. Indeed, the debates on that section centered on two Catholic charities, 1 *Report of the Proceedings & Debates of the Constitutional Convention of the State of Virginia (1901–02)*, at 792–93, 802–04, 807–08, 811–12 (Hermitage Press 1906); its main advocate attacked “Catholic schools,” regarding them as “an indirect assault upon the public free school system,” *id.* at 803; and he expressed concern that orphans were “being indoctrinated in the creed of the Roman Catholic Church,” *id.* at 804. Those are the Blaine Amendment’s ingredients simpliciter.

The other relevant provision—Article VIII, § 10—also has Blaine ties. When “massive resistance” to desegregation led to support for private-school funding, *Griffin v. County Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 221 (1964), Virginia carried over Blaine’s code “sectarian” language into Article VIII, § 10, by excluding “[]sectarian private schools.” So the religious exclusion imposed on the students here is directly linked to the Blaine Amendment’s “original bias.” *Espinoza*, 591 U.S. at 507 (Alito, J., concurring) (citation modified).

Virginia’s exclusions also fail neutrality because they are “specifically directed at religious practice,” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 526 (2022) (citation modified), “suppress[]” religious study, a form of “religious conduct,” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993), and “single out” religious majors for exclusion, while forcing taxpayers to fund secular majors they deem objectionable, *Trinity Lutheran*, 582 U.S. at 460. Even worse, Virginia disfavors certain religious people, such as those who select CIP Code 39-series programs. *Supra* pp. 8–10, 14–16.

General applicability is lacking too. VTAG funds CIP Code 39-series majors with secular double majors subject to certain restrictions and makes secular exceptions to those conditions on an individualized basis if “circumstances beyond the control of the student” demand it. 8 Va. Admin. Code § 40-71-10. No one knows when this exception applies. C.A.Resp.-Br.54–55. And VANGSTAP turns on the Guard’s case-by-case assessment of whether a religious major is secular enough for inclusion. *Supra* pp. 12–13. So both programs “invite[] the government to decide

which reasons for [funding religious study] are worthy of solicitude.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021) (citation modified).

Third, Virginia imposes a denominational preference, “differentiating between religions based on theological practices” and making public benefits “turn[] on inherently religious choices.” *Catholic Charities*, 605 U.S. at 250. VTAG funds religious degrees that officials regard as more “secularly[] focused” and excludes degrees they deem more “vocational.” C.A.Resp.Br.52–53. But the extent to which “religious education” should “inculcate religious doctrine” is a “fundamentally theological choice[,] driven by ... religious doctrines.” *Catholic Charities*, 605 U.S. at 252. So VTAG “establishes a preference” for religious programs that don’t “proselytize” in the classroom. *Id.* at 250.

VANGSTAP funding, too, turns on officials’ ad hoc decisions about “the boundary between religious faith and academic” study, *Colorado Christian Univ.*, 534 F.3d at 1262, based on religious institutions’ “fundamentally theological choices,” *Catholic Charities*, 605 U.S. at 252. For instance, the Guard examines how an “institution structures its programs,” including whether the major is associated with a “school of divinity”—and if it is, the major is “ineligible” for a grant. C.A.Resp.Br.14, 40. That “imposes a denominational preference” in favor of religions that use less religious terminology or place less emphasis on evangelization. *Catholic Charities*, 605 U.S. at 250.

Practically speaking, Virginia *favours* students at institutions associated with mainline denominations, which offer CIP Code 38-series majors and lack divinity schools. And Virginia *disfavours* students at evangelical institutions, which offer CIP Code 39-series majors and prioritize divinity schools. C.A.-Reply.Br.23–24. Such “textbook denominational discrimination” violates the Religion Clauses. *Catholic Charities*, 605 U.S. at 248.

Fourth, Virginia’s grants result in excessive “state entanglement with religion.” *Carson*, 596 U.S. at 787. VTAG foists CIP Code-based religiosity standards on private institutions, making “government officials ... judges of the ‘indoctrination’ quotient of theology classes.” *Colorado Christian Univ.*, 534 F.3d at 1263. That overrides religious institutions’ own beliefs about what is “consistent with scholarly objectivity,” *id.* at 1266, and opens the door to “litigating in court about what ... ha[s] religious meaning,” *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977).

VANGSTAP magnifies “the intrusiveness problem.” *Colorado Christian Univ.*, 534 F.3d at 1266. Officials have unbridled discretion to make “religious judgments” about majors, *ibid.*, scrutinizing how a “religious school pursues its ... mission,” *Carson*, 596 U.S. at 787, including how it “structures its programs,” C.A.Resp.Br.40. Officials also “second[] guess[]” religious institutions’ own classifications. *Colorado Christian Univ.*, 534 F.3d at 1266; accord C.A.Resp.Br.40. The result is excessive entanglement with religion. Accord *Larson v. Valente*, 456 U.S. 228, 255 (1982).

II. *Locke* should be overruled.

Locke was wrong from its inception, and this Court’s recent precedent continues to hollow out its flawed foundation. Judge Richardson just said as much in *Hall*, calling for this Court to “formally overrule” *Locke*. 175 F.4th at 516 (Richardson, J., concurring) (all caps omitted). Stare-decisis factors squarely support that result. So the Court should grant review, and if *Locke* allows Virginia’s discriminatory programs, the Court should overrule it.

A. This Court’s precedents have fatally undermined *Locke*’s flawed foundation.

Locke “was gravely wrong the day it was decided” and “has no place in law under the Constitution.” *Trump v. Hawaii*, 585 U.S. 667, 710 (2018) (quotation omitted); accord *Hall*, 175 F.4th at 516 (Richardson, J., concurring) (“*Locke* was wrongly decided.”). Under the First Amendment, the rule has always been that “[w]hen the State makes a public benefit generally available,” it forms “part of the baseline against which burdens on religion are measured,” and “withhold[ing] that benefit from some individuals solely on the basis of religion” violates the Constitution “no less than ... impos[ing] a special tax” on them. *Locke*, 540 U.S. at 726–27 (Scalia, J., dissenting).

Locke was wrong to allow a state funding program that excludes students with “deep religious conviction,” denying them the “equal treatment” the Religion Clauses command. *Id.* at 727, 733 (emphasis omitted). It is “a stain on our Free Exercise jurisprudence” that the Court should eradicate. *Hall*, 175 F.4th at 520 (Richardson, J., concurring).

Perhaps that's why the Court hasn't applied *Locke*'s holding in any subsequent case. Instead, the Court has consistently struck down programs that exclude religious people from public benefits. *E.g.*, *Carson*, 596 U.S. at 780; *Espinoza*, 591 U.S. at 475–77; *Trinity Lutheran*, 582 U.S. at 458–63. And in so doing, the Court has confined *Locke*'s holding to its facts. *E.g.*, *Carson*, 596 U.S. at 788–89 (distinguishing *Locke*); *Espinoza*, 591 U.S. at 479–81 (same); *Trinity Lutheran*, 582 U.S. at 464–65 (same); see *Hall*, 175 F.4th at 520 (Richardson, J., concurring) (noting that this Court has “confined [*Locke*] to its facts”).

Recent caselaw has not only limited *Locke* but has also decisively rejected the four pillars on which its holding rests.

First, *Locke* presumed “tension” between the Establishment Clause and the Free Exercise Clause, necessitating “room for play in the joints between them.” 540 U.S. at 718 (citation modified). But *Kennedy* has since recognized that the Religion Clauses have “complementary purposes, not warring ones.” 597 U.S. at 533 (citation modified). So “there is no conflict between” the Religion Clauses, and thus the play-in-the-joints concept no longer has purchase. *Id.* at 543. That is especially true after *Espinoza* rejected any “state experimentation in the suppression of ... the free exercise of religion.” 591 U.S. at 485 (quotation omitted).

Second, *Locke* minimized “the State’s disfavor of religion” as a “mild[] kind” and characterized the harms to religious students as insignificant because Washington didn’t ban any “religious service or rite” and Davey could still “participate in ... political

affairs” and use the scholarship “to pursue a secular degree at a different institution.” 540 U.S. at 720, 721 n.4. Yet *Trinity Lutheran* didn’t gauge religious discrimination’s constitutional harm based on its practical effects. Even if only “a few extra scraped knees” resulted from denying religious people “a public benefit” for a safer playground surface, the Court said discrimination “is odious to our Constitution all the same, and cannot stand.” 582 U.S. at 467. This echoes Justice Scalia’s observation that “[t]he indignity of being singled out for special burdens on the basis of one’s religious calling is so profound that the concrete harm produced can never be dismissed as insubstantial.” *Locke*, 540 U.S. at 731 (Scalia, J., dissenting).

Third, *Locke* distorted the Court’s commitment to religious neutrality, holding that a targeted religious exclusion from funding didn’t “disapprov[e] of a particular religion or of religion in general.” 540 U.S. at 725 n.10 (citation modified). But that suggestion runs headlong into *Kennedy*, which held that seeking “to restrict ... actions at least in part because of their religious character” isn’t “neutral toward religion.” 597 U.S. at 526 (quotation omitted).

Finally, *Locke* elevated “a State’s [nebulous] anti-establishment interests” over citizens’ established First Amendment rights. 540 U.S. at 721–22. Again, *Kennedy* rejects this, declaring that “phantom” anti-establishment concerns cannot “justify actual violations of an individual’s First Amendment rights.” 597 U.S. at 543. And *Trinity Lutheran* similarly held that any state interest “in achieving greater separation of church and State than is already ensured under the Establishment Clause ... is limited by the Free Exercise Clause.” 582 U.S. at 466 (quotation omitted).

Locke also rewrote history. 540 U.S. at 723. The Founding generation opposed churches receiving “public money *solely* to support their worship, because such funding essentially required ... a religious offering [or tithe]. But the same was not true of funding ... *education*, even if beneficiaries used some of the funds for religion.” Mark Storslee, *Church Taxes & the Original Understanding of the Establishment Clause*, 169 U. PA. L. REV. 111, 183 (2020) (emphasis added).

Indeed, Virginia “frequently and uncontroversially provided state support to schools and colleges that educated aspiring clergy.” Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 71 (2023). Liberty Hall is one example. When Virginia’s General Assembly sold glebes or land set aside to support Anglican clergy, it channeled the profits to schools like Liberty Hall, a Presbyterian institution. Storslee, *supra*, at 134. Such schools fostered “a well-educated clergy” equipped to delivered “informative sermons.” Liberty Hall History, WASHINGTON & LEE UNIV., perma.cc/ZM8X-W8SF. No one considered “providing money for [this] education” problematic, even if students pursued professional ministry. Storslee, *supra*, at 135.

Simply put, Founding-era Virginians objected only to “laws that singled [ministers] out for financial aid.” *Locke*, 540 U.S. at 727 (Scalia, J., dissenting). That “historic ... interest” doesn’t apply to generally available educational grants. *Id.* at 725. Because *Locke*’s holding lacks any legal or historical foundation, it should be overruled. See *Trinity Lutheran*, 582 U.S. at 470 (Gorsuch, J., concurring in part) (noting

Locke “can [only] be correct” based on “the opinion’s claim of a long tradition against [using] public funds for training of the clergy).

B. Stare decisis is no impediment.

Now “akin to a ... stool where all [the] legs have ... been knocked out,” *National Republican Senatorial Comm. (NRSC) v. FEC*, 146 S. Ct. 2404, 2424 (2026), *Locke* cannot be saved by stare decisis. The doctrine is “weakest in constitutional cases, where only [this Court] may readily fix [its] own mistakes. *Slaughter*, 146 S. Ct. at 2302. Here, “every factor ... counsels in favor of letting [*Locke*] go.” *Ibid*.

Begin with *Locke*’s reasoning, which was clearly “flaw[ed] ... from the start.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024). Justice Scalia’s dissent, joined by Justice Thomas, “was persuasive in [2004] and has ... been amply vindicated by this Court’s subsequent precedents.” *NRSC*, 146 S. Ct. at 2425. And “Members of this Court have long questioned [*Locke*’s] premises.” *Loper Bright*, 603 U.S. at 407. E.g., *Espinoza*, 591 U.S. at 492 (Thomas, J., concurring); *id.* at 512–14 (Gorsuch, J., concurring); *Trinity Lutheran*, 582 U.S. at 468 (Thomas, J., concurring in part). So have lower court judges, e.g., *Hall*, 175 F.4th at 516–20 (Richardson, J., concurring), and scholars, e.g., Thomas C. Berg & Douglas Laycock, *The Mistakes in Locke v. Davey and the Future of State Payments for Services Provided by Religious Institutions*, 40 TULSA L. REV. 227 (2004).

On consistency, *Locke* is “far out of step with [the Court’s] cases,” which have “limited [*Locke*] to its facts.” *Slaughter*, 146 S. Ct. at 2302. The Court

“applied [*Locke*] only once” and has since distinguished it “at every turn.” *Id.* at 2303. People of faith otherwise have a right to “*equal* treatment” because “the Religion Clauses demand neutrality.” *Locke*, 540 U.S. at 727–28 (Scalia, J., dissenting).

Locke has also proven unworkable. From the beginning, the “bounds of [*Locke*’s] holding” were “far from clear.” *Colorado Christian Univ.*, 534 F.3d at 1254. States and lower courts have consistently gotten them wrong, using *Locke* to justify blatant discrimination that wouldn’t be tolerated in other contexts. Accord, *e.g.*, *Espinoza*, 591 U.S. at 492 (Thomas, J., concurring); *Locke*, 540 U.S. at 732 (Scalia, J., dissenting). This case is a prime example. Overturning *Locke* is the only way to stop lower courts from continuing to license First Amendment violations.

Nor do reliance interests support preserving *Locke*. After *Trinity Lutheran*, *Espinoza*, and *Carson*, “all that remains of [*Locke*] is a decaying husk.” *Loper Bright*, 603 U.S. at 410. And scholarship has established that *Locke* “relied on an erroneous historical narrative” to justify its rule. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 270 (2022). So it’s “hard to see how anyone ... could reasonably expect ... to rely on [*Locke*].” *Loper Bright*, 603 U.S. at 410. Plus, pointing to *Locke* to justify “exclud[ing] some members of the community from an otherwise generally available public benefit because of their religious exercise,” *Carson*, 596 U.S. at 781, is the sort of “unwarranted and unfair” action that engenders no legitimate “reliance interest,” *NRSC*, 146 S. Ct. at 2426.

At bottom, *Locke* was defective from the start, and over the last two decades, its “reasoning has been rejected by subsequent cases.” *Ibid.* The Court should grant the petition and bring *Locke*’s misadventure to an end.

III. The students satisfy the other preliminary-injunction requirements.

The students easily satisfy the remaining preliminary-injunction factors. Virginia irreparably harms the students by violating their rights under the Religion Clauses. *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025). And Virginia denies the students thousands of dollars in grants each year, which they have “no guarantee of eventual[ly] recover[ing]” due to sovereign immunity. *Alabama Ass’n of Realtors*, 594 U.S. at 765; see *Galette v. New Jersey Transit Corp.*, 607 U.S. 509, 527 (2026) (“a damages claim against a state or federal officer in their official capacity is barred by sovereign immunity”).

The public interest also favors the students. The “observance of ... constitutional guarantees” serves “the highest public interest.” *United States v. Raines*, 362 U.S. 17, 27 (1960). And Virginia has no valid interest in “protect[ing] the [so-called] religious liberty of taxpayers” by denying some religious students public benefits. *Espinoza*, 591 U.S. at 485.

The final consideration—the balance of equities—likewise tips sharply toward the students. They merely seek equal treatment as “member[s] of the community.” *Trinity Lutheran*, 582 U.S. at 463. Virginia’s “antiestablishment interest” can’t justify excluding them. *Carson*, 596 U.S. at 781.

IV. This case is an ideal vehicle.

Locke has been at odds with the First Amendment for 22 years, and its scope continues to divide the lower courts. The Court should grant this petition and put the confusion to rest. This case is an ideal vehicle for six reasons.

First, this case provides a full picture of Virginia's religious discrimination, raising VTAG's and VANG-STAP's conflicting and arbitrary exclusions.

Second, the students have raised all relevant theories under the Religion Clauses—ranging from non-neutrality to denominational discrimination to excessive entanglement. This ensures that the Court has the full range of constitutional arguments before it.

Third, the students' declarations discussing their still-indeterminate career plans expose *Locke*'s error in assuming that the government funds ministers when it awards grants to individuals pursuing the excluded religious majors.

Fourth, this case demonstrates the broad scope of *Locke*'s harms. Most obviously, *Locke* allows States to unfairly exclude religious people from public benefits. But as this case illustrates, courts also use *Locke* to excuse non-neutral government action, denominational discrimination, and excessive entanglement.

Fifth, the proceedings below fleshed out Virginia's position on *Locke*'s scope, the Religion Clauses, and the Commonwealth's anti-establishment interests.

Finally, Virginia makes no effort to satisfy strict scrutiny. So if *Locke* doesn't apply or is overruled, the outcome is clear: Virginia's religious discrimination must fall.

V. Certiorari before judgment is warranted.

The students request certiorari before judgment under Rule 11. That is warranted for three reasons.

First, the issues raised here—facial discrimination against and among religious students in a generally available public benefit program—are of “imperative public importance.” Sup. Ct. R. 11. This Court's rulings establishing that States cannot “treat religious people ... as second-class” are “some of [its] most important cases.” Oral Arg. Tr. at 106, *Oklahoma Statewide Charter Sch. Bd. v. Drummond*, No. 24-394 (Kavanaugh, J.). That discrimination betrays principles “fundamental to our constitutional order.” *Catholic Charities*, 605 U.S. at 254. The Court should put a stop to that “odious” practice immediately, *Trinity Lutheran*, 582 U.S. at 467, given the irreparable harm to countless students in Virginia and the many other States with similar religious exclusions, accord *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam); Pet. for Cert. at 30–31, *Hall v. Fleming*, No. 26-193 (listing other States). It's of the utmost public importance to end that religious discrimination now.

Second, the Fourth Circuit in *Hall* already said that *Locke* is “directly analogous” to a related free-exercise challenge to VTAG's religious exclusion. 175 F.4th at 514. And a petition is pending in that case. Pet. for Cert. at 30–31, *Hall v. Fleming*, No. 26-193. This Court should grant review in both cases.

Third, the Fourth Circuit has not heeded the students' pleas for relief. That court denied their motion for an injunction pending appeal without explanation. And it deferred the students' motion to accelerate the appeal, declining to act on the motion even now that the appeal is fully briefed.

The constitutional issues presented here are of utmost importance. The harms to people of faith are ongoing and substantial. The time for review is now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 2026