

No. _____

In the Supreme Court of the United States

BETHANY M. HALL,
PETITIONER,

v.

A. SCOTT FLEMING, *in his*
official capacity as Director of the State
Council of Higher Education for Virginia,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Virginia Tuition Assistance Grant Program (“VTAG”) provides thousands of dollars per year to residents who attend private colleges and universities in Virginia. The program excludes students who choose certain religious majors—pursuits that Virginia considers *too* religious for public funding, just like Washington State considered such majors too religious to fund in *Locke v. Davey*, 540 U.S. 712 (2004). Petitioner Bethany Hall initially received a VTAG grant to help fund her studies as a music-education major at a private religious university. But when she changed her major to youth ministries, and then to music and worship, the State rescinded her grant. The Fourth Circuit held that Ms. Hall’s case is “directly analogous” to *Locke* and thus rejected Ms. Hall’s claim because lower courts are bound by *Locke*.

Only this Court can overrule *Locke*, and there is every reason for this Court to overturn that erroneous decision now. *Locke* was wrong when it was decided, and this Court’s subsequent caselaw has further eviscerated its fatally flawed foundation. Yet *Locke* remains the law of the land, so many States’ education-funding programs continue to treat disfavored religious degrees worse than all secular studies, unconstitutionally marginalizing people of faith. This forces Ms. Hall—and thousands of students like her—to choose between their religious calling and generally available education assistance.

The Question Presented is whether this Court should overrule *Locke*.

PARTIES TO THE PROCEEDINGS

The parties to this action are Plaintiff-Petitioner Bethany M. Hall and Defendant-Respondent A. Scott Fleming, in his official capacity as Director of the State Council of Higher Education for Virginia.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual college student.

STATEMENT OF RELATED PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit, No.25-1574, *Hall v. Fleming*, judgment entered May 13, 2026.

U.S. District Court for the District of Eastern Virginia, No.3:25-cv-186, *Hall v. Fleming*, judgment entered May 9, 2025, motion to dismiss granted May 9, 2025.

There are no additional proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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DECISIONS BELOW

The Fourth Circuit’s panel opinion upholding the decision of the District Court is reported at 175 F.4th 510 (4th Cir. 2026), and reproduced at App.1a–21a. The District Court’s opinion granting Respondent’s Motion To Dismiss Ms. Hall’s Complaint with prejudice is unreported but is reproduced at App.22a–34a.

JURISDICTION

The Fourth Circuit entered judgment on May 13, 2026. *Hall v. Fleming*, No.25-1574, Dkt.33 (4th Cir. May 13, 2026). Lower courts had jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The relevant constitutional, statutory, and regulatory provisions are reproduced at App.35a–47a. The First Amendment to the United States Constitution is reproduced at App.35a. The Fourteenth Amendment to the United States Constitution is reproduced at App.35a–37a. Key provisions from Virginia’s Tuition Assistance Grant Act, Va. Code §§ 23.1-628 and 23.1-631, are reproduced at App.38a–39a. Key provisions from the State Council of Higher Education for Virginia’s Virginia Tuition Assistance Grant Program Regulations, 8 Va. Admin. Code § 40-71-10, are reproduced at App.40a–47a.

INTRODUCTION

Locke v. Davey, 540 U.S. 712 (2004), held that the Free Exercise Clause allows States to exclude otherwise qualified students from generally available tuition assistance programs simply because they pursue certain religious degrees. *Locke* was an outlier when issued, and it is now indefensible in light of this Court's subsequent Free Exercise and Establishment Clause decisions. This Court has attempted to limit *Locke*. See, e.g., *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 789 (2022). Yet the decision continues to harm thousands of students across the country who face the same religious discrimination that the student-plaintiff¹ in *Locke* suffered and that Ms. Hall is suffering now. Religious students must choose whether to pursue only government-preferred degrees or forfeit their participation in generally available scholarship programs.

Locke's anomalous holding also emboldens government officials to continue acting with religious intolerance. Even after this Court's trilogy of religious-funding cases culminating in *Carson*, hostile States still insist on excluding religious schools and students. The way to stop discrimination on the basis of religion is to stop discriminating on the basis of religion. Yet *Locke* explicitly allows it to continue.

¹ In full disclosure, the student-plaintiff in *Locke*, Joshua Davey, is a counsel to Petitioner in this case.

As Judge Richardson explained in his concurrence below, *Locke* “betrays the founding generation’s commitment to religious liberty, and the Supreme Court should formally overrule it.” App.14a. *Locke* “is a stain on our Free Exercise Jurisprudence.” App.21a. But until this Court “formally buries” *Locke*, “lower-court judges must keep applying it.” App.21a. And when they do, students like Ms. Hall—and thousands more—are the victims.

Justice Scalia was right to dissent in *Locke* and Judge Richardson was right below. And this Court’s post-*Locke* free-exercise decisions have systemically “eroded” each of *Locke*’s already shaky theoretical “underpinnings,” *Janus v. Am. Fed’n of State, Cnty., and Mun. Employees*, 585 U.S. 878, 924 (2018) (citation omitted), “reject[ing] or ignor[ing] every premise of *Locke*,” App.17a (Richardson, J., concurring) (citation modified).

Start with *Locke*’s central premise: a law can facially discriminate against religion if it only disfavors religion in a “mild” way or targets religious use rather than religious status. 540 U.S. at 720 (citation modified). But “mild[]” or use-based religious discrimination had no basis in this Court’s caselaw at the time *Locke* was decided and has been thoroughly discredited since. See, e.g., *Carson*, 596 U.S. at 786.

Locke also relied on the notion that “play in the joints” between the Free Exercise and Establishment Clauses allows States to infringe on free-exercise rights out of an antiestablishment interest. See 540

U.S. at 718–22. This rationale lacked support at the time, and this Court’s recent caselaw has definitively rejected it. *See, e.g., Carson*, 596 U.S. at 781 (“A State’s antiestablishment interest does not justify [excluding] some members of the community from an otherwise generally available public benefit because of their religious exercise.”); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 553 (2022) (“A natural reading . . . would seem to suggest the [Establishment and Free Exercise] Clauses have complementary purposes, not warring ones where one Clause is always sure to prevail over the others.”) (citation omitted).

That leaves only *Locke*’s “flawed historical analysis.” App.17a (Richardson, J., concurring). But “Justice Scalia debunked that [historical] account in dissent.” App.14a. And subsequent research confirms no Founding Era tradition of excluding religious instruction from generally available programs. In fact, the opposite is true.

This case presents an ideal vehicle to stop *Locke*’s greenlighting of religious discrimination. The VTAG Program—like Washington State’s program in *Locke*—excludes certain religious degrees from an otherwise generally available grant program. This Court should grant the Petition and overrule *Locke*.

STATEMENT OF THE CASE

I. The VTAG Program

The VTAG Program provides financial assistance to Virginia residents attending in-state private

colleges and universities, awarding eligible students grants of up to \$5,250 per school year. App.38a–39a.² Full-time students who receive VTAG grants may only use those funds to attend “nonprofit private institutions of higher education whose primary purpose is to provide collegiate, graduate, or professional education *and not provide religious training or theological education.*” App.38a (emphasis added).

The State Council of Higher Education for Virginia administers VTAG and has issued regulations providing that students pursuing certain religious degrees are ineligible. *See* App.43a. The Council classifies academic programs using the National Center for Education Statistics’ Classification of Instructional Programs, or “CIP” system. App.43a. Under the Council’s regulations, “[p]rograms that provide religious training or theological education” are “classified as CIP Code 39-series programs,” and are “not eligible programs” for VTAG funds. App.43a. A student may receive a VTAG grant *and* earn an ineligible CIP Code 39-series degree only if the student’s eligible-program credits exceed her ineligible-program credits for that academic term—in other words, if the student pursues a double major and takes more credits in the

² At the time that Ms. Hall filed her Complaint below, eligible students could receive grants of up to \$5,000 per school year. *See* App.3a.

avored degree program than the disfavored one. App.43a.

II. Petitioner Bethany Hall

Bethany Hall is a Virginia resident enrolled at Liberty University—a VTAG-eligible institution in Lynchburg, Virginia. App.2a.

In February 2023, Ms. Hall applied for and was awarded a \$5,000 grant under the VTAG Program to use towards her tuition expenses. App.3a–4a. But she lost that grant before she received any funds because she decided to pursue an excluded religious major. App.4a.

Ms. Hall originally pursued a “Music Education: Choral” major, but shortly into her freshman year she “heard God’s call and changed her major to ‘Youth Ministries.’” App.4a. Liberty’s financial aid office informed Ms. Hall that she was no longer eligible for the VTAG Program because “Youth Ministries” qualified as a CIP Code 39-series major that is excluded from the VTAG Program under the Council’s regulations. *See* App.4a.

Ms. Hall changed her major again, first in August 2023 to “Christian Leadership and Church Ministries,” then in October 2023 to “Music & Worship.” App.24a–25a. With each change, Liberty informed Ms. Hall that she remained ineligible for a VTAG grant because she chose an excluded religious major. App.24a–25a.

Rather than abandon “her belief and conviction that God is calling her to minister through music and

worship to youth,” Ms. Hall remained enrolled in a CIP Code 39-series major. App.25a (citation omitted). To this day, Ms. Hall has not received the VTAG grant for which she initially qualified and which many other students receive. App.25a.

III. Proceedings Below

On March 7, 2025, Ms. Hall filed a single-count Complaint in the United States District Court for the Eastern District of Virginia against Respondent A. Scott Fleming, in his official capacity as the Director of the Council, under 42 U.S.C. § 1983, claiming that the VTAG Program violates her rights under the Free Exercise Clause of the First Amendment. *See* App.4a. Ms. Hall alleged that the VTAG Program violated those rights by excluding her from otherwise generally available public benefits solely because of the religious nature of her major. *See* App.23a.

The Complaint sought a declaration that the VTAG Program violates the Free Exercise Clause, an injunction enjoining Respondent from withholding VTAG funds from Ms. Hall, and an injunction requiring Respondent to pay into an interest-bearing escrow account the VTAG funds that Ms. Hall would have received in the ongoing academic year and for all subsequent years that she remains eligible for the funds but for her pursuit of a disfavored religious major. App.26a.

On April 14, 2025, Respondent moved to dismiss Ms. Hall’s Complaint, App.26a, and the District Court granted that motion on May 9, 2025, App.22a–34a. The District Court grounded its decision solely on this

Court’s decision in *Locke*, holding that Ms. Hall’s “situation” is “directly analogous” to the student-plaintiff’s situation in *Locke*. App.29a. Because the District Court “lacks the authority to overrule such precedent,” App.28a, it dismissed Ms. Hall’s lawsuit, App.33a–34a.

The Fourth Circuit affirmed on the same grounds. App.1a–13a. The Fourth Circuit first observed that the parties agreed that “the facts here are on all fours [or identical] with *Locke*,” and concluded that “*Locke* is directly analogous to this case.” App.7a (citation omitted). “Both [Ms.] Hall” and the student-plaintiff in *Locke* “chose to pursue a major in religious vocation at a private religious college,” both the Washington State statute at issue in *Locke* and the VTAG Program here “allow students to take religious courses if the funding does not go toward an ineligible major,” both students’ “choice of majors rendered them ineligible for a tuition grant” under their respective State’s laws, and both students sued claiming that the state laws violated the Free Exercise Clause by “barring tuition assistance for students pursuing religious vocational majors.” App.7a–8a (citations omitted).

Observing that the *Locke* Court “held that Washington’s scholarship program did not violate the Free Exercise Clause,” the Fourth Circuit determined that “the only question before [it]” was to resolve whether this Court’s subsequent free exercise precedent—namely, *Trinity Lutheran Church of Columbia v. Comer*, 582 U.S. 449 (2017), *Espinoza v.*

Mont. Dep’t of Rev., 591 U.S. 464 (2020), and *Carson as next friend of O.C. v. Makin*, 596 U.S. 767 (2022)—“abrogated *Locke*.” App.6a–8a. After briefly reviewing those cases, the Fourth Circuit concluded that this Court “has yet to either overrule or abandon its decision in *Locke*.” App.12a; see App.8a–12a. Accordingly, the Fourth Circuit affirmed dismissal of Petitioner’s lawsuit under *Locke*. App.13a.

Judge Richardson concurred, noting that this case “is materially indistinguishable from *Locke*” and that the lower courts could “not declare *Locke* implicitly abrogated” absent more explicit guidance from this Court. App.18a. Nonetheless, he explained that “*Locke* was wrongly decided” and should be overruled. App.14a. *Locke* “betrays the founding generation’s commitment to religious liberty” and “rested on bad history and bad reasoning.” App.14a. Citing Justice Scalia’s dissent in *Locke* and post-*Locke* scholarship, Judge Richardson criticized *Locke* as an “outlier” that failed to follow *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). App.18a; see App.16a–18a. This Court’s decisions in *Trintiy Lutheran*, *Espinoza*, and *Carson* have “eroded *Locke*’s foundations,” he continued. App.16a–17a. *Locke* “is a stain on our Free Exercise jurisprudence” that lower courts will unfortunately be forced to “keep applying” until this Court “formally buries” it. App.21a.

REASONS FOR GRANTING THE PETITION

I. This Court should overrule *Locke*.

While *stare decisis* “plays an important role in [this Court’s] case law,” it “is not an inexorable

command,” and it “is at its weakest when [this Court] interpret[s] the Constitution.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 263–264 (2022) (citations omitted); *accord Trump v. Slaughter*, No.25-332, 609 U.S. ___, 2026 WL 1855612, at *15 (U.S. June 29, 2026). The Constitution “is notoriously hard to amend,” meaning “the country is usually stuck with a bad decision” from this Court on a constitutional issue “unless this Court corrects its own mistake.” *Dobbs*, 597 U.S. at 264 (citation modified).

In deciding whether to overrule a constitutional decision, this Court considers (1) “the ‘quality’ of the decision’s reasoning”; (2) “its ‘consistency’ with [this Court’s] other cases”; (3) “the ‘workability’ of its rule”; and (4) “the interests of those who have ‘rel[ie]d’ on it.” *Trump*, 2026 WL 1855612, at *15 (citing *Knick v. Township of Scott*, 588 U.S. 180, 203 (2019)).

Here, each of these considerations weighs strongly in favor of this Court overruling *Locke*.

A. *Locke* was poorly reasoned.

From “the day it was decided,” *Locke*’s reading of the First Amendment has “stood on exceptionally weak grounds,” *Dobbs*, 597 U.S. at 268, 270, “rest[ing] on bad history and bad reasoning,” App.14a (Richardson, J., concurring).

In *Locke*, a Washington State program provided scholarships to assist eligible in-state students with post-secondary education expenses. *See* 540 U.S. at 715–16; Wash. Admin. Code § 250-80-050(2)

(2003). But in accordance with “the State’s constitutional prohibition on providing funds to students to pursue degrees that are ‘devotional in nature or designed to induce religious faith,’” Washington regulations mandated that an eligible student “may not pursue a degree in theology at [an eligible] institution while receiving the scholarship.” *Locke*, 540 U.S. at 716 (citing Wash. Const. art. I, § 11, Wash. Rev. Code §§ 250-80-020(12)(f)–(g)).

The student in *Locke* enrolled at Northwest College where he “pursue[d] a double major in pastoral ministries and business management/administration.” *Id.* at 717. Northwest then informed him that his major qualified as “a devotional theology degree,” and that he could not receive his scholarship funds unless he agreed to “not pursue such a degree at Northwest.” *Id.* (citation modified). The student sued Washington State officials, arguing that denying him access to scholarship funds solely because he chose to pursue a theology degree violated the First Amendment. *Id.* at 718.

This Court rejected the student’s argument, concluding that Washington could exclude students pursuing religious degrees from an otherwise generally available scholarship program without violating the Free Exercise Clause. *See id.* at 719–24. That conclusion rested on several underlying premises, all of which were incompatible with the Free Exercise Clause and this Court’s decisions when *Locke* was decided.

First, Locke reasoned that Washington’s “disfavor of religion” was “mild” and imposed too “minor” a “burden” to trigger strict scrutiny, *id.* at 720, 725 (citation modified), “resolving the case without applying any particular level of scrutiny,” App.16a (Richardson, J., concurring) (citation modified); see *Locke*, 540 U.S. at 730 (Scalia, J., dissenting).

The notion that a State can enact a law denying access to a generally available public benefit on religious grounds without triggering strict scrutiny was wrong under this Court’s then-existing precedent. See *Locke*, 540 U.S. at 726–27 (Scalia, J., dissenting). Long before *Locke*, it was well-established that States may not “put” individuals “to a choice” by “conditioning the availability of benefits . . . upon a recipient’s willingness to . . . surrender his religiously impelled status.” *Trinity Lutheran*, 582 U.S. at 462 (quoting *McDaniel v. Paty*, 435 U.S. 618, 626 (1978) (plurality op.)) (citation modified). And *Lukumi* made clear that a “law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation” “must undergo the most rigorous of scrutiny” and will “survive strict scrutiny only in rare cases.” 508 U.S. at 546.

So, it was evident at the time of *Locke* that “[w]hen the State makes a public benefit generally available,” the State “violates the Free Exercise Clause” if it “withholds that benefit from some individuals based solely on the basis of religion.”

Locke, 540 U.S. at 726–27 (Scalia, J., dissenting). The law in *Locke* did just that: it created “a generally available public benefit” and then “carved out a solitary course of study for exclusion: theology.” *Id.* at 727. The program “facially discriminate[d] against religion,” and should have been subjected to strict scrutiny under *Lukumi*. *Id.* at 726; see App.16a (Richardson, J., concurring).

While *Locke* suggested that such discrimination can escape strict scrutiny if “its material consequences are not severe,” “[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.” 540 U.S. at 731 (Scalia, J., dissenting). Nor should it have mattered that Washington’s “program was not motivated by animus toward religion,” because it “in fact singled out a religious practice for special burdens.” *Id.* at 732 (citation modified).

Second, *Locke* reasoned that Washington’s “disfavor of religion” could escape strict scrutiny because it excluded students based on the “category of instruction” they intended to pursue—*i.e.*, a religious use—rather than based on whether the student was a “minister” or a member of a certain religion like “Santeria” (*i.e.*, a religious status). *Id.* at 720–21 (majority op.) (citation modified).

This status-use distinction lacked grounding in this Court’s caselaw. *Sherbert v. Verner*, 374 U.S. 398 (1963), explained that the State may not infringe upon “the liberties of religion and expression” by

denying or placing “conditions upon a benefit or privilege” without any indication that a State could impose such conditions if they targeted only religious *uses*. *Id.* at 404. And *Lukumi* made clear that “[a] law that targets *religious conduct* for distinctive treatment or advances legitimate governmental interests only against *conduct with a religious motivation*” is subject to and “will survive strict scrutiny only in rare cases.” 508 U.S. at 546 (emphases added). The student’s decision in *Locke* to use his scholarship funds to pursue a pastoral ministries degree because he wanted “to prepare [himself] through that college training for a lifetime of ministry, specifically as a church pastor,” 540 U.S. at 717 (citation omitted), constituted “conduct with a religious motivation,” *Lukumi*, 508 U.S. at 546.

Third, *Locke* erroneously relied on a “play in the joints” theory, reasoning that because the Establishment and Free Exercise Clauses “are frequently in tension,” a State can violate free exercise rights to steer well clear of any establishment-based objections. 540 U.S. at 718–19 (majority op.). But there is “nothing anomalous about constitutional commands that abut” and “the Religion Clauses demand neutrality”: States “cannot discriminate a little bit” against free exercise rights under supposed antiestablishment interests “and then plead ‘play in the joints’ when haled into court.” *Id.* at 728 (Scalia, J., dissenting).

What is more, this Court had already defined how the Clauses interact in *Witters v. Washington*

Department of Services for the Blind, 474 U.S. 481, 488 (1986). *Witters* held that it does not offend the Establishment Clause for States to make public funds “available generally without regard to the sectarian-nonsectarian . . . nature of the institution benefited,” because the funds only flow to religious institutions or activities due to “the genuinely independent and private choices of aid recipients.” *Id.* (citations omitted). That the “aid goes to individuals means that the decision to support religious education is made by the individual, not by the State.” *Id.* *Witters* also noted that a program “made available generally” to the public with nothing to indicate that “any significant portion” of the aid will “end up flowing to religious education” does not create an Establishment Clause concern. *Id.* at 487–89 (citations omitted).

Indeed, only two years before *Locke*, the Court in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), declared such “neutral” aid programs “not readily subject to [Establishment Clause] challenge[s]” because any “advancement” of religion is “attributable to the individual recipient, not to the government.” *Id.* at 652.

And once a State makes a benefit program generally available, it cannot impose religious-based restrictions by citing supposed antiestablishment interests: “the 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.” *Widmar v. Vincent*, 454 U.S. 263, 276 (1981). Doing so—as

Washington did in *Locke*—violates the Free Exercise Clause. See *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 16 (1947); *Sherbert*, 374 U.S. at 404; *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990); *Locke*, 540 U.S. at 728–29 (Scalia, J., dissenting).

Finally, *Locke* invoked a purported Founding-era tradition against taxpayer-funded clergy training as supplying a historical basis for Washington’s law. See 540 U.S. at 722–23 (majority op.). But “Justice Scalia debunked” *Locke*’s ahistorical “account in dissent.” App.14a (Richardson, J., concurring). The Founding-era history “says nothing about whether the clergy had to be excluded from benefits the State made available to all.” *Locke*, 540 U.S. at 727 (Scalia, J., dissenting). While there is evidence of “Founding-era opposition to special funding,” App.15a (Richardson, J., concurring), and “the Framers’ hostility to funding the clergy *specifically*,” *Locke*, 540 U.S. at 727 (Scalia, J., dissenting), this does not “reveal any Founding-era practice of excluding clergy (or clergy in training) from generally available benefits,” App.16a (Richardson, J., concurring) (citations omitted).

James Madison’s *Memorial and Remonstrance*—upon which the *Locke* majority relied, 540 U.S. at 722 (majority op.)—only undermines *Locke*’s historical thesis, see App.15a (Richardson, J., concurring) (citing *Locke*, 540 U.S. at 722). There, Madison opposed a Virginia bill that would have assessed a tax for the purpose of providing funding to “directly support Christian teachers and ministers.” App.15a

(citation omitted). Madison criticized the bill as an unequal “discrimination in favor of religious viewpoints,” App.15a (citing 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, 242 (2004)), because it “singled out religious entities for special benefits” rather than simply “*allow[ing] religious groups to participate in a generally available government program*,” App.15a (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 854–55 (1995) (Thomas, J., concurring)) (emphasis added); see James Madison, *A Memorial and Remonstrance* 1 (1785) (religion “must be left to the conviction and conscience of every man” and all have the right “to exercise it” as their conviction and conscience “may dictate”).³ Madison opposed the bill based on *free exercise* concerns to ensure that “the ambitious hope of making laws for the human mind” be “extinguished for ever,” rather than *antiestablishment* concerns of keeping public benefits out of the hands of religious people or institutions. Letter from James Madison to Thomas Jefferson (Jan. 22, 1786).⁴

The Framers took no issue with both the Continental and First Congresses appropriating funds for religious services. See, e.g., *5 Journals of the Continental Congress 1774–1789* (Library of

³ Available at <https://bit.ly/4fwVshF> (all webpages last accessed Aug. 10, 2026).

⁴ Available at <http://bit.ly/4fsYJi0>.

Congress, Washington, D.C., Worthington Chauncy Ford ed. 1906) (appointing a “chaplain to Congress” “to attend every morning”);⁵ FIRST CONGRESS. Sess. I. Ch. 17. sec. 4 (Sep. 22, 1789) (providing that “each chaplain of Congress” shall be paid “at the rate of five hundred dollars per annum” during session).⁶

And contrary to *Locke*’s core historical claim, the Founders repeatedly confirmed their position that the government violated a person’s religious liberties by denying his “civil capacities”—which included equal access to all public benefits conferred by the government, such as holding office, alleviation from taxes, or continued public employment⁷—on the basis of religion. *See, e.g., The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787*, in 4 *The Founders’ Constitution* art. 6, cl. 3, doc. 20 (Elliot, Jonathan, ed., 2d ed., Reprint. New York: Burt Franklin, n.d, 1888) (Reverend Shutes explaining

⁵ Available at perma.cc/C5AQ-B8JN.

⁶ Available at perma.cc/D89P-QGRA.

⁷ *See* Samuel Johnson, *A Dictionary of the English Language*, 6th Ed. 1785, at 331, 385 (defining “civil” and “capacity”), available at perma.cc/E3AH-7GSA; *Vlaming v. W. Point Sch. Bd.*, 895 S.E.2d 705, 727 (Va. 2023) (“The expression ‘civil capacities’ has deep roots in legal history and jurisprudential theory,” showing that it is “an idiomatic phrase that refers to the bundle of positive-law rights that enable individuals to participate fully in all lawful civil, political, and legal spheres of life.”).

that “all have an equal claim to the blessings of the government under which they live, and which they support, so none should be excluded from them for being of any particular denomination in religion.”⁸ James Madison, *Observations on Jefferson’s Draft of a Constitution for Virginia* (Oct. 15, 1788), in 1 *The Founders’ Constitution* ch. 17, doc. 25 (William T. Hutchinson et al. eds., Chicago and London: University of Chicago Press, 1962) (opposing exclusion of clergy from public office);⁹ Letter from Thomas Jefferson to Jeremiah Moore (Aug. 14, 1800), from *The Works of Thomas Jefferson in Twelve Volumes* (Federal Edition, Library of Congress, Paul Leicester Ford ed.) (clergy should “possess the same rights” as other citizens in seeking elected office).¹⁰

Locke’s reliance on early state constitutions was “[e]qually misplaced.” 540 U.S. at 728 n.1 (Scalia, J., dissenting). *Locke* cited Founding-era constitutional provisions from Georgia, Pennsylvania, New Jersey, Delaware, Kentucky, Vermont, Tennessee, and Ohio as purportedly persuasive examples of permissible government discriminations against religion. *See id.* at 723 (majority op.). Yet, those same state constitutional provisions evince a desire to curb governmentally *coerced* aid to religion—not to curb a

⁸ Available at perma.cc/YT3R-4D2N.

⁹ Available at perma.cc/2MNX-NVGB.

¹⁰ Available at perma.cc/7U2E-Y9CP.

citizen’s freely chosen use of a publicly available benefit. *See id.* at 728 n.1 (Scalia, J., dissenting).

As Justice Scalia explained, these provisions were directed at prohibiting measures that “single[d] out the clergy for public support”: there is no evidence such “provisions were applied in [] a discriminatory fashion” to “exclude clergymen from *general benefits* available to all citizens.” *Id.* (emphasis added).

To take just one example, Georgia’s constitution in 1789 provided that “[a]ll persons shall have the free exercise of religion; without being *obliged* to contribute to the support of any religious profession but their own.” Ga. Const. art. IV, § 5 (1789) (emphasis added). And while Georgia originally banned clergy from holding elected office, the State quickly abandoned this position, reversing course by 1798. *See* Ga. Const. art. IV, § 10 (1798) (providing that no person shall “be denied the enjoyment of *any* civil right merely on account of his religious principles”) (emphasis added).

B. Later cases further refute *Locke*.

While *Locke* was wrong when decided, it is now even further “out of step with [this Court’s] cases.” *Trump*, 2026 WL 1855612, at *15. A trilogy of this Court’s post-*Locke* cases—*Trinity Lutheran*, *Espinoza*, and *Carson*—have refuted *Locke*’s premises. App.16a–18a (Richardson, J., concurring). That provides powerful support for overruling *Locke*. *See Janus*, 585 U.S. at 926, 929 (overruling case that “conflict[ed] with other First Amendment decisions” that “eroded its underpinnings”) (citation omitted).

First, *Trinity Lutheran*, *Espinoza*, and *Carson* contradict *Locke*’s fundamental premise that a state policy withholding a generally available benefit based on religion escapes strict scrutiny because it imposes only a “mild” burden on free exercise. *Locke*, 540 U.S. at 720–21 (citation modified).

Trinity Lutheran held that Missouri’s policy of excluding religious institutions from a generally available program subsidizing playground surface areas was subject to strict scrutiny and violated the Free Exercise Clause. *See* 582 U.S. at 465.

Espinoza reached the same conclusion for a Montana program that “provide[d] tuition assistance to parents who send their children to private schools” but excluded schools “controlled by a ‘church, sect, or denomination’” under the Montana constitution’s “no-aid provision.” 591 U.S. at 467–68. The Court there explained that the provision violated the Free Exercise Clause because it “bar[red] religious schools” and “parents who wish to send their children to a religious school” from accessing “public benefits solely because of the religious character of the schools.” *Id.* at 476 (citation modified).

Carson likewise subjected a Maine tuition assistance program that excluded “sectarian” schools to strict scrutiny and held the program unconstitutional, explaining that “a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” 596 U.S. at 778, 789.

Second, Trinity Lutheran, Espinoza, and Carson rejected *Locke*’s secondary premise that a “State’s disfavor of religion . . . is of a far milder kind” if it discriminates based on how a benefit is used (*i.e.*, a student seeking to use funds to pursue a theology degree) as opposed to who is benefitting (*i.e.*, a minister seeking to run for office). *See Locke*, 540 U.S. at 720–21. While *Trinity Lutheran* did not address directly “religious uses of funding or other forms of discrimination,” 582 U.S. at 465 n.3, it held that States may not enact laws that “regulate or outlaw religious *conduct* because it is religiously motivated” just as they may not enact laws that “discriminate in the distribution of public benefits based upon religious status,” *id.* at 461 (emphasis added) (citation modified).¹¹

Espinoza further undermined *Locke*’s status-use distinction, explaining that “[s]tatus-based discrimination remains status based even if one of its goals or effects is preventing religious organizations from putting aid *to religious uses*.” 591 U.S. at 478 (emphasis added) (citation omitted). And the Court disclaimed any “suggest[ion] that . . . some lesser degree of scrutiny applies to discrimination against

¹¹ Justices Gorsuch and Thomas noted the lack of foundation for any potential distinction that “might be drawn between laws that discriminate on the basis of religious *status* and religious *use*.” *Trinity Lutheran*, 582 U.S. at 469 (Gorsuch, J., concurring in part).

religious uses of government aid.” *Id.* (citation omitted).

Leaving no doubt, *Carson* explicitly rejected *Locke*’s premise that state laws targeting “religious uses of funding” are permissible under the Free Exercise Clause. 596 U.S. at 786–88 (citation omitted). As *Carson* explained, “any status-use distinction lacks a meaningful application not only in theory, but in practice as well,” and the Constitution’s “prohibition on status-based discrimination . . . is not a permission to engage in use-based discrimination,” which is just as “offensive to the Free Exercise Clause.” *Id.* at 787–88.

Third, *Trinity Lutheran*, *Espinoza*, and *Carson* refute *Locke*’s use of the “play in the joints” theory. While *Trinity Lutheran* retained some of the “play in the joints” language, this Court clarified that a State’s “policy preference for skating as far as possible from religious establishment concerns” “cannot qualify as [a] compelling” interest “[i]n the face of [a] clear infringement on free exercise.” 582 U.S. at 466.¹²

And while *Espinoza* also recited the “play in the joints” language, 591 U.S. at 473 (citations omitted), the opinion made clear that a State’s “interest in separating church and State ‘more fiercely’ than the Federal Constitution . . . ‘cannot qualify as

¹² Justices Thomas and Gorsuch noted their disagreement with the majority’s choice to keep using *Locke*’s “play in the joints” language. *Trinity Lutheran*, 582 U.S. at 468 (Thomas, J., concurring in part).

compelling’ in the face of the infringement of free exercise,” *id.* at 484–85 (emphasis added) (citation omitted).

Carson then put the final nail in the coffin of the “play in the joints” theory. That decision rejected the dissenters’ argument that *Locke’s* “play in the joints” theory allowed Maine to bar funding to religious schools. *Carson*, 596 U.S. at 781. Allowing private individuals to use public funds from “a neutral benefit program” for religious purposes “does not offend the Establishment Clause” and an “antiestablishment interest does not justify” a State “exclud[ing] some members of the community” simply “because of their religious exercise.” *Id.* (citation omitted).

In sum, *Trinity Lutheran*, *Espinoza*, and *Carson* have “eroded” each of *Locke’s* theoretical “underpinnings.” *Janus*, 585 U.S. at 929. Combine that with *Locke’s* “flawed historical analysis,” App.17a (Richardson, J., concurring), and there is nothing left of *Locke’s* foundation.

C. *Locke’s* rule is not workable.

Locke failed to establish a workable rule and has never “be[en] understood and applied in a consistent and predictable manner.” *Dobbs*, 597 U.S. at 281. This Court has so recognized, as demonstrated by the Court’s repeated narrowing or rejection of *Locke’s* reasoning in *Trinity Lutheran*, *Espinoza*, and *Carson*.

Start with *Trinity Lutheran*, where this Court rejected Missouri’s argument that “the free exercise question” there was “controlled by” *Locke*. *Trinity*

Lutheran, 582 U.S. at 464. The analysis there first distinguished *Locke* based on the status-use distinction—which it has since abandoned, *see supra* pp.22–23—reasoning that the student in *Locke* “was denied a scholarship because of what he proposed *to do*” (“use the funds to prepare for the ministry”), whereas Trinity Lutheran was denied funds “because of what it is” (“a church”), *Trinity Lutheran*, 582 U.S. at 464.

This Court then turned to *Locke*’s refuted historical analysis, reasoning that Washington had a stronger “antiestablishment interest” than Missouri because pursuing a pastoral ministries degree was “an ‘essentially religious endeavor’” and opposition to using state funds “to support church leaders’ lay at the historic core of the Religion Clauses,” whereas “nothing of the sort can be said about a program to use recycled tires to resurface playgrounds.” *Id.* at 465 (citation omitted).¹³

In *Espinoza*, Montana similarly tried to hide behind *Locke*, but this Court again rejected *Locke*’s application. *See Espinoza*, 591 U.S. at 479–83. *Espinoza* distinguished *Locke* in two ways. First,

¹³ Justices Thomas’ and Gorsuch’s concurring opinions questioned *Locke*’s reasoning. Justice Thomas called *Locke*’s “endorsement ... of discrimination against religion” “troubling.” *Trinity Lutheran*, 582 U.S. at 468 (Thomas, J., concurring in part). Justice Gorsuch suggested that *Locke*—“[i]f ... correct”—could only stand because of *Locke*’s “*claim* of a long tradition against the use of public funds for training of the clergy.” *Id.* at 469–70 (Gorsuch, J., concurring in part) (emphasis added).

unlike Washington in *Locke*, which only disqualified a narrow category of potential beneficiaries, Montana barred “all aid to a religious school ‘simply because of what it is,’ putting the school to a choice between being religious or receiving government benefits.” *Id.* at 480 (citing *Trinity Lutheran*, 582 U.S. at 464).

Second, *Locke* relied on the allegedly “‘historic and substantial’ state interest in not funding the training of clergy,” *id.*, while there is no comparable “‘historic and substantial’ tradition against aiding [religious] schools,” *id.* at 483. *Espinoza* thus limited *Locke* as permitting States to prohibit funding of “state-supported clergy,” *id.* at 483, due to the claimed Founding-era tradition, *see id.* at 479–81, which did not actually exist, *supra* pp.16–20.¹⁴

And in *Carson*, this Court found Maine’s reliance on *Locke* “of no help.” 596 U.S. at 788. *Carson* observed that *Locke* “expressly turned on what it identified as the ‘historic and substantial state interest’ against using ‘taxpayer funds to support church leaders,’” and noted that *Espinoza* already established there is no comparable “‘historic and substantial’ tradition against aiding [private religious] schools.” *Id.* (citations omitted).

¹⁴ Justices Thomas and Gorsuch would have held that “*Locke* incorrectly interpreted the Establishment Clause” and called on the Court to “[r]eturn[] the Establishment Clause to its proper scope.” *Espinoza*, 591 U.S. at 492, 496 (Thomas, J., concurring).

Carson then limited *Locke* further still, stating that “*Locke* cannot be read beyond its narrow focus on vocational religious degrees.” *Id.* at 789. And the Court stressed that *Locke* does not permit “the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” *Id.* Thus, *Carson* “cabined *Locke* to its facts” and identified “its flawed historical analysis” as its sole remaining “premise.” App.17a (Richardson, J., concurring).

D. *Locke* generated no reliance interests that justify leaving it in place.

Overruling *Locke* will not “upend” any “substantial reliance interests.” *Dobbs*, 597 U.S. at 287 (citations omitted).

Perhaps “the most important” consideration here is “the reliance interests of the American people . . . in the preservation of our constitutionally promised liberties.” *Trump*, 2026 WL 1855612, at *16 (citation omitted). “[I]t would be unconscionable to permit [First Amendment] rights to be abridged in perpetuity,” *Janus*, 585 U.S. at 927, so that States can preserve discriminatory tuition-assistance programs.

While many States have enacted statutory programs like Virginia’s VTAG Program here and Washington’s scholarship program in *Locke*, *see infra* Part III, that “is not a compelling interest for *stare decisis*,” *Janus*, 585 U.S. at 928 n.27 (citing *Citizens United v. Fed. Elec. Comm’n*, 558 U.S. 310, 365 (2010)). If “legislative acts could prevent [this Court] from overruling [its] own precedents,” that would

interfere with this Court’s “duty ‘to say what the law is.’” *Janus*, 585 U.S. at 928 n.27 (citation omitted).

States have long “been on notice” of “this Court’s misgivings about” *Locke*. *Id.* at 927. Since issuing *Locke* over 20 years ago, this Court has repeatedly declined to apply its logic, *supra* pp.20–24, “rejected or ignored [its] every premise,” App.17a (Richardson, J., concurring); *see supra* pp.20–24, and cabined its application, *see Carson*, 596 U.S. at 789. Any State that has enacted or retained a generally available tuition assistance program during this time that denies “religious persons” access to “public benefits on the basis of their anticipated religious use of the benefits,” *Carson*, 596 U.S. at 789, “must have understood that the constitutionality of such a provision was uncertain” at best, *Janus*, 585 U.S. at 927.

II. This case is an ideal vehicle for overruling *Locke*.

This case is “on all fours” with *Locke* in all relevant respects. App.7a (citation omitted). To start, Virginia, like Washington in *Locke*, established a generally available public financial-aid program to assist state residents with educational expenses at in-state higher education institutions. *Compare* App.2a–3a, *with Locke*, 540 U.S. at 716–17. Both Ms. Hall and the student-plaintiff in *Locke* enrolled at in-state institutions in their respective States and were originally deemed eligible to receive funds under their respective State’s programs. *Compare* App.3a–4a, *with Locke*, 540 U.S. at 717. Each State denied the

students access to funds that they were otherwise qualified for solely because they chose to pursue majors that were deemed ineligible due to their religious nature. *Compare* App.3a–4a, *with Locke*, 540 U.S. at 717.

Faced with the choice of abandoning their calling to pursue their faith-based majors or losing access to public funding, both students chose to continue pursuing their majors and were denied financial aid as a result. *Compare* App.3a–4a, *with Locke*, 540 U.S. at 717. And both claimed that their respective State violated the Free Exercise Clause by forcing religious students to choose between following their faith or losing access to financial aid. *Compare* App.3a–4a, *with Locke*, 540 U.S. at 718.

The lower courts here also recognized the symmetry between this case and *Locke*. *See* App.7a (“The Supreme Court’s decision in *Locke* is directly analogous to this case.”); App.14a (Richardson, J., concurring) (agreeing that “*Locke* . . . controls here”); App.29a (“Here, Plaintiff’s situation stands directly analogous to Davey’s.”).

Because this case is like *Locke* in all material respects, it gives the Court an ideal opportunity to revisit and overrule *Locke*.

III. This Court should not wait any longer to overrule *Locke*’s harmful holding.

This Court should grant this Petition and overrule *Locke* now rather than wait, because the religious discrimination that Ms. Hall faces is an all-

too-common scenario students confront across the Nation. *See Espinoza*, 591 U.S. at 492 (Thomas, J., concurring) (“[G]overnments continue to rely on *Locke*’s improper understanding of ‘antiestablishment interests’ to defend against free exercise challenges.”) (citations omitted).

Numerous States, beyond Virginia and Washington, have adopted laws barring students from receiving certain educational grants if they are enrolled in certain religious programs:

- Alabama excludes students from the State’s Student Grant Program if they are “enrolled” or “intend to enroll in a course of study leading to an undergraduate degree in theology or divinity.” Ala. Code § 16-33A-1(4)(f);
- Florida prohibits students from receiving an Effective Access to Student Education grant if “he or she is [] enrolled in a program of study leading to a degree in theology or divinity.” Fla. Stat. § 1009.89(4)(b)(2);
- Illinois forbids state educational assistance to students “pursuing a course of study consisting of training to become a . . . professional person in the field of religion.” 110 Ill. Comp. Stat. 920/8;
- Michigan prohibits students enrolled “in a program of study leading to a degree in theology, divining, or religious education” from receiving public grants. Mich. Comp. § 390.994;

- Minnesota students cannot receive state scholarships unless they are enrolled in “a nonsectarian, baccalaureate degree-granting program.” Minn. Stat. § 135A.30, Subd. 2(3);
- New Jersey students “enrolled in a course leading to a degree in theology or divinity shall not be eligible for a tuition aid grant.” N.J. Stat. § 18A:71B-20;
- New Mexico bars any funds from its “Student Choice Grants” program from “be[ing] used for sectarian purposes.” N.M. Stat. § 21-21C-7;
- Ohio law provides that “[n]o grant shall be made to any student in a course of study in theology, religion, or other field of preparation for a religious profession unless such course of study leads to an accredited bachelor of arts, bachelor of science, associate of arts, or associate of science degree.” Ohio Rev. Code § 3333.122(E);
- Oregon prohibits awarding grants “to any qualified student enrolled in a course of study required for and leading to a degree in theology, divinity, or religious education.” Or. Rev. Stat. § 348.260(8); and
- South Carolina excludes those “enrolled in a course of study leading to a degree in theology, divinity, or religious education” from receiving state grants. S.C. Code § 59-113-20(e).

Like Ms. Hall and the student-plaintiff in *Locke*, thousands of college students feel the spiritual calling to pursue majors in religious or devotional programs

every year. See Data USA, *Divinity & Ministry* (identifying 6,724 “Divinity & Ministry” degrees that students earned in 2024 alone).¹⁵ These students “seek only *equal* treatment—the right to direct their scholarship to their chosen course of study, a right every other [] scholar enjoys.” *Locke*, 540 U.S. at 727 (Scalia, J. dissenting) (citation modified). Yet, under *Locke*, numerous students will continue to be excluded from otherwise generally available state tuition or educational expenses assistance programs solely because they have chosen to pursue a faith-based major. So long as *Locke* remains, many students will face an unconstitutional demand: pursue their chosen religious calling or forfeit generally available educational funding.

Some students, unsure of their calling, might allow the State’s anti-religious standards to influence them toward a secular profession. Others, like Ms. Hall, will follow their faith and lose benefits available to their peers. Either way, they will suffer constitutional harm that this Court should stop now.

Beyond this, the discriminatory state programs that *Locke* authorizes send the pernicious message that religious callings are second-class, marginalizing those who pursue them. And their continued existence suggests to public officials that this Court’s precedent countenances state-sponsored religious

¹⁵ Available at perma.cc/L38W-B9UQ.

discrimination, resulting in a proliferation of such discrimination writ large.

CONCLUSION

This Court should grant this Petition.

Respectfully submitted this 11th day of August, 2026,

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APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT,
FILED MAY 13, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1574

BETHANY M. HALL,

Plaintiff-Appellant,

v.

A. SCOTT FLEMING,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Virginia, at Richmond. David J.
Novak, District Judge. (3:25-cv-00186-DJN)

Argued: December 10, 2025

Decided: May 13, 2026

Before AGEE, RICHARDSON, and BENJAMIN, Circuit
Judges.

Affirmed by published opinion. Judge Benjamin wrote
the opinion, in which Judge Agee and Judge Richardson
joined. Judge Richardson wrote a concurring opinion.

Appendix A

DeANDREA GIST BENJAMIN, Circuit Judge:

Bethany M. Hall sued A. Scott Fleming, in his official capacity as director of the State Council of Higher Education for Virginia (“SCHEV”), under 42 U.S.C. § 1983 for violating her free exercise rights under the First Amendment of the United States Constitution. The district court granted Fleming’s motion to dismiss with prejudice. We affirm the district court’s dismissal.

I.

Hall is a full-time undergraduate student at Liberty University who recently completed her sophomore year. Before Hall started at Liberty, she applied for the Virginia Tuition Assistance Grant Program (“VTAG Program”).

The VTAG Program¹ provides financial assistance to Virginia residents who choose to attend accredited, private, nonprofit colleges and universities in Virginia. To be eligible for the VTAG Program, students must be “obligated to pay tuition as full-time . . . students at an eligible institution.”² Va. Code Ann. § 23.1-631 (2016).

1. SCHEV is responsible for administering the VTAG Program. Fleming, as the director of SCHEV, is responsible for its operations.

2. Students enrolled at religious colleges and universities in Virginia, such as Liberty University, Regent University, and Eastern Mennonite University, are eligible to participate in the VTAG Program. J.A. 9; *see also Virginia Tuition Assistance Grant Program*, STATE COUNCIL OF HIGHER EDUC. FOR VA., SCHEV. EDU, [perma.cc/KRH4-SQZT].

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Eligible students can receive a grant worth \$5,000 per school year.

At issue here, the VTAG Program limits eligibility to “nonprofit private institutions of higher education whose primary purpose is to provide collegiate, graduate, or professional education *and not provide religious training or theological education.*” Va. Code Ann. § 23.1-628 (2016) (emphasis added). SCHEV’s regulations for the VTAG Program provide that undergraduate “[p]rograms that provide religious training or theological education, classified as CIP Code 39-series programs, are not eligible programs.” 8 Va. Admin. Code § 40-71-10 (2022). “CIP” stands for “Classification of Instructional Programs,” which are published by the National Center for Educational Statistics. CIP Code 39 is an extensive list of majors that “prepare individuals for the professional practice of religious vocations.”³ Simply put, a student majoring in a program listed in CIP Code 39 is ineligible for the VTAG program. However, the VTAG Program does have *some* flexibility. Students pursuing a double major that includes both an eligible major and a CIP Code 39 major remain eligible for the VTAG Program, provided that, in any given semester, they do not enroll in more credits for the ineligible major than for the eligible major. See 8 Va. Admin. Code § 40-71-10 (2022).

In February 2023, Liberty’s financial aid office informed Hall that she was eligible to receive \$5,000

3. *Detail for CIP Code 39*, Nat’l Ctr. For Educ. Statistics, NCES.ED.GOV, [<https://perma.cc/BD4R-HTPY>].

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through the VTAG Program for the 2023-2024 academic year. She began at Liberty that fall, majoring in “Music Education: Choral.” But soon after, Hall “heard God’s call to ministry and changed her major to ‘Youth Ministries,’” a CIP Code 39 major. *See* Appellant’s Br. (ECF No. 12) at 2-3⁴ (hereinafter “Opening Br.”) (citing J.A. 11-12).⁵ Liberty’s financial aid office subsequently informed Hall that given her change of major, she was ineligible to receive a grant through the VTAG Program. Hall then sought to change her major again, this time to “Music & Worship.” But “Music & Worship” was also a CIP Code 39 major. Liberty informed Hall that her “Music & Worship” major was also ineligible for the VTAG Program. Hall did not receive a grant through the VTAG Program for the 2023-2024 and 2024-2025 academic years.

Hall sued Fleming in federal district court. *Hall v. Fleming*, No. 3:25-CV-186-DJN, 2025 WL 2021022 (E.D. Va. May 9, 2025). She asserted a single claim, alleging that the VTAG Program violated her free exercise rights under the First Amendment. *Id.* at *1. Fleming moved to dismiss on the grounds that the Supreme Court’s decision in *Locke v. Davey*, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004), controlled and thus foreclosed Hall’s claim. *Id.* at *3. Hall conceded that “her situation aligns with the one

4. Page numbers for citations to ECF documents utilize the page numbers in the red header on each document.

5. Citations to “J.A.” refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the district court. Page numbers for citations to the J.A. utilize the “JA#” numbering at the bottom of the page on each document.

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faced by the undergraduate student pursuing a religious vocation major in *Locke*.” *Id.* But Hall contended that the Supreme Court in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017), *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 140 S.Ct. 2246, 207 L.Ed.2d 679 (2020), and *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 142 S.Ct. 1987, 213 L.Ed.2d 286 (2022), “effectively abrogated and overruled *Locke*,” and thus “*Locke* should now be explicitly overruled.” *Hall*, 2025 WL 2021022, at *2.

The district court disagreed. It found that Hall’s claim was directly analogous to the plaintiff’s in *Locke*. *Id.* at *3. Further, the district court found that contrary to Hall’s “assertion that the Supreme Court’s subsequent Free Exercise decisions effectively abrogated and overruled *Locke*, these cases instead reaffirm *Locke*’s holding and support its application to the instant case.” *Id.* (internal citations omitted). Accordingly, the district court dismissed Hall’s case with prejudice. *Id.* at *5.

Hall now appeals, asserting the same arguments. We have jurisdiction pursuant to 28 U.S.C. § 1291, as this is an appeal of a final decision from the United States District Court for the Eastern District of Virginia.

II.

“We review a district court’s grant of a motion to dismiss de novo.” *Ray v. Roane*, 948 F.3d 222, 226 (4th Cir. 2020) (citing *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016)).

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The Religion Clauses of the First Amendment provide that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. CONST. amend I.

Locke is a seminal Supreme Court case on the relationship between the Free Exercise Clause of the First Amendment and state educational scholarship programs like the VTAG Program. There, the state of Washington established a scholarship program to assist academically gifted students with college expenses. 540 U.S. at 715, 124 S.Ct. 1307. The scholarship was not to “be awarded to any student who is pursuing a degree in theology.” *Id.* at 716, 124 S.Ct. 1307 (citing Wash. Rev. Code. Ann. § 26B.10.814 (West 1997)). Joshua Davey was a scholarship recipient and attended Northwest College. *Id.* at 717, 124 S.Ct. 1307. He “decided to pursue a double major in pastoral ministries and business management/administration,” but was informed by Northwest College that he could not use the scholarship for his theology degree. *Id.* Davey sued, asserting that the Washington statute violated his free exercise rights. *Id.* at 718, 124 S.Ct. 1307.

The Supreme Court held that Washington’s scholarship program did not violate the Free Exercise Clause. *Id.* at 715, 124 S.Ct. 1307. The Supreme Court reasoned that Washington’s law did not deny Davey the right to “participate in the political affairs of the community,” or “require students to choose between their religious beliefs and receiving a government benefit.” *Id.* at 720-21,

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124 S.Ct. 1307. The state “merely chose[] not to fund a distinct category of instruction.” *Id.* at 721, 124 S.Ct. 1307. Further, the scholarship program permitted students to receive and use public funds to attend religious schools and take devotional theology courses. *Id.* at 724-25, 124 S.Ct. 1307. But “majoring in devotional theology is akin to a religious calling.” *Id.* at 721, 124 S.Ct. 1307. And importantly, the Supreme Court held that the Washington statute was supported by the “historic and substantial state interest” “against procuring taxpayer funds to support church leaders, which was one of the hallmarks of an ‘established religion.’” *Id.* at 725, 722, 124 S.Ct. 1307.

B.

The Supreme Court’s decision in *Locke* is directly analogous to this case. Hall even concedes that the facts here “are on all fours [or identical]” with *Locke*. Reply Br. (ECF No. 19) at 1. Both Hall and Davey chose to pursue a major in a religious vocation at a private religious college. Both state statutes allow students to take religious courses if the funding does not go toward an ineligible major. *See* 8 Va. Admin. Code § 40-71-10 (2022); *see also Locke*, 540 U.S. at 724-25, 124 S.Ct. 1307.⁶ Both Hall’s and Davey’s choice of majors rendered them ineligible for a tuition grant. And both Hall and Davey sued, contending that their respective state laws barring tuition assistance for

6. Eligibility criteria for the VTAG Program is actually broader than the Washington statute in *Locke*. The VTAG Program grant can extend to students pursuing a double major that includes an ineligible CIP Code 39 major. *See* 8 Va. Admin. Code § 40-71-10 (2022).

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students pursuing religious vocational majors violated the Free Exercise Clause. So the only question before us is whether the Supreme Court in *Trinity Lutheran*, *Espinoza*, and *Carson* abrogated *Locke*, as Hall says, “into oblivion.” Reply Br. at 1. They did not.

1.

In *Trinity Lutheran*, the Missouri Department of Natural Resources offered grants to public and private schools for the purchase of rubber playground surfaces. 582 U.S. 449, 453, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017). Trinity Lutheran Church applied for the grant for its preschool daycare center but was denied. *Id.* at 453-54, 137 S.Ct. 2012. The department had a policy that “categorically disqualif[ied] churches and other religious organizations from receiving grants under its playground resurfacing program.” *Id.* at 454, 137 S.Ct. 2012. The Supreme Court held that this policy violated Trinity Lutheran Church’s free exercise rights because it “expressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.” *Id.* at 462, 137 S.Ct. 2012. The “policy put[] Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution.” *Id.* The simple rule was that “[n]o churches need apply.” *Id.* at 465, 137 S.Ct. 2012.

Locke came under the spotlight in *Trinity Lutheran*. The department argued that the free exercise question was controlled by *Locke*. *Id.* at 464, 137 S.Ct. 2012. However, the Supreme Court held that Washington’s restriction on

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the use of scholarship funds in *Locke* was fundamentally different from Missouri denying Trinity Lutheran Church a grant solely because it was a church. *See id.* at 464-65, 137 S.Ct. 2012. It explained that Washington had “merely chosen not to fund a distinct category of instruction.” *Id.* at 464, 137 S.Ct. 2012 (quoting *Locke*, 540 U.S. at 721, 124 S.Ct. 1307). Further, while “scholarship recipients were free to use the money at accredited religious and non-religious schools alike, they were not permitted to use the funds to pursue a devotional theology degree—one ‘devotional in nature or designed to induce religious faith.’” *Id.* at 464, 137 S.Ct. 2012 (quoting *Locke*, 540 U.S. at 716, 124 S.Ct. 1307). The Supreme Court also emphasized “Washington’s choice . . . in keeping with the State’s antiestablishment interest in not using taxpayer funds to pay for the training of clergy.” *Id.* at 465, 137 S.Ct. 2012. And while “opposition to such funding to support church leaders lay at the historic core of the Religion Clauses,” nothing of the sort could “be said about a program to use recycled tires to resurface playgrounds.” *Id.* (cleaned up). Accordingly, *Trinity Lutheran* did not abrogate or overrule *Locke*; it instead reaffirmed *Locke*’s holding.

The Supreme Court reaffirmed *Locke* again in *Espinoza*. In *Espinoza*, the Montana legislature established a program to provide tuition assistance to parents that were enrolling their children in private schools. 591 U.S. at 467-68, 140 S.Ct. 2246. Three mothers sought to use the tuition assistance scholarships at a religious school, but Montana’s “Rule 1” prohibited families from using those scholarships at religious schools. *Id.* at 470-71, 140 S.Ct. 2246. The Supreme Court held

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that, like Missouri's law in *Trinity Lutheran*, Montana's law "bar[red] religious schools from public benefits solely because of the religious character of the schools." *Id.* at 476, 140 S.Ct. 2246. *Espinoza* "turn[ed] expressly on religious status and not religious use." *Id.* at 477, 140 S.Ct. 2246.

Importantly (and like in *Trinity Lutheran*), the Supreme Court in *Espinoza* also found that *Locke* differed in a few key ways. *See id.* at 479-83, 140 S.Ct. 2246. First, the *Locke* plaintiff was denied a scholarship because he proposed to use funds to prepare for the ministry; Montana instead sought to "bar[] all aid to a religious school 'simply because of what it is,' putting the school to a choice between being religious or receiving government benefits." *Id.* at 479-80, 140 S.Ct. 2246 (citing *Trinity Lutheran*, 582 U.S. at 464, 137 S.Ct. 2012). Second, *Espinoza* reiterated the "historic and substantial" state interest in *Locke* to not fund the training of clergy, which was not present in Montana's decision to disqualify religious schools from government aid. *Id.* at 480, 137 S.Ct. 2012 (citing *Locke*, 540 U.S. at 725, 124 S.Ct. 1307). Accordingly, *Espinoza* does not "explain[] why *Locke* should have no application to free exercise claims," as Hall suggests. Reply Br. at 4. It did the contrary.

The Supreme Court did not veer in *Carson*, its latest decision on free exercise rights and educational funding. There, Maine enacted a tuition assistance program for parents who lived in school districts that did not operate a secondary school of their own. 596 U.S. at 771-72, 142 S.Ct. 1987. Pursuant to the program, parents could

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designate a public or private secondary school that they would like their child to attend. *Id.* at 772, 142 S.Ct. 1987. The school district would then transmit payments to that school to help defray the costs of tuition. *Id.* However, the relevant Maine statute rendered all “sectarian” private schools ineligible. *See id.* at 774- 75, 142 S.Ct. 1987. Two Maine families sued the Maine Department of Education, alleging that the “nonsectarian” requirement of Maine’s tuition assistance program violated the First Amendment. *Id.* at 776, 142 S.Ct. 1987. The Supreme Court held that Maine’s “nonsectarian” requirement violated the First Amendment. It explained that “[t]he ‘unremarkable’ principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case.” *Id.* at 780, 142 S.Ct. 1987.

The effects of the state laws challenged in *Trinity Lutheran*, *Espinoza*, and *Carson* were the same—to disqualify a religious organization or school from a generally available benefit, solely because of their religious character. *See id.* Like in *Trinity Lutheran* and *Espinoza*, the Supreme Court in *Carson* again emphasized how *Locke* was different and could “be of no help to Maine.” *Id.* at 788, 142 S.Ct. 1987. The funding in *Locke* was intended to be used “to prepare for the ministry,” but it could still be used for theology courses—“only a ‘vocational religious’ degree was excluded.” *Id.* (citing *Trinity Lutheran*, 582 U.S. at 464, 137 S.Ct. 2012). And for the third time, the Supreme Court emphasized “the ‘historic and substantial state interest’ [in *Locke*] against using ‘taxpayer funds to support church leaders’” that was not present in *Trinity Lutheran*, *Espinoza*, or *Carson*. *Id.* (citing *Locke*, 540 U.S. at 722, 124 S.Ct. 1307).

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Based on the foregoing, we disagree with Hall and hold that the Supreme Court has yet to either overrule or abandon its decision in *Locke* through *Trinity Lutheran*, *Espinoza*, or *Carson*.

2.

In opposition to the straightforward analysis above, Hall contends that her current position should be analogized to the Supreme Court's treatment of the *Lemon* test. See Opening Br. at 15-16. We disagree.

In *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971), the Supreme Court attempted a “grand unified theory” for assessing Establishment Clause claims that required “an examination of the law’s purposes, effects, and potential entanglement with religion.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022) (citing *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 60, 139 S.Ct. 2067, 204 L.Ed.2d 452 (2019)). Yet, the Supreme Court in later opinions “either expressly declined to apply the [*Lemon*] test or [] simply ignored it.” *Am. Legion*, 588 U.S. at 49, 139 S.Ct. 2067 (2019) (collecting cases). In *American Legion*, the Supreme Court explicitly stated that “[w]hile the *Lemon* Court ambitiously attempted to find a grand unified theory of the Establishment Clause, in later cases, we have taken a more modest approach.” *Id.* at 60, 139 S.Ct. 2067. And ultimately in *Kennedy*, the Supreme Court noted that it “long ago abandoned *Lemon*.” 597 U.S. 507, 534, 142 S.Ct. 2407 (2022).

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Unlike the *Lemon* test, nowhere in *Trinity Lutheran*, *Espinoza*, or *Carson* did the Supreme Court make such explicit statements rejecting *Locke*'s holding. And as a lower court, we must "follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989). So, in the absence of any statement from the Supreme Court questioning or rejecting *Locke*'s holding, it is still the law. We must therefore faithfully apply it.

III.

Accordingly, the district court's dismissal is

AFFIRMED.

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RICHARDSON, Circuit Judge, concurring:

I concur because *Locke v. Davey*, 540 U.S. 712, 124 S.Ct. 1307, 158 L.Ed.2d 1 (2004), controls here. I write separately because *Locke* was wrongly decided. It betrays the founding generation’s commitment to religious liberty, and the Supreme Court should formally overrule it. But, until the Court does, *Locke* binds us—even as a moth-eaten shell of its former self.

**I. THE SUPREME COURT SHOULD FORMALLY
OVERRULE *LOCKE V. DAVEY***

Like Washington’s scholarship program in *Locke*, Virginia’s Tuition Assistance Grant Program facially discriminates “against a religious minority”—“those whose belief in their religion is so strong that they dedicate their study and their lives to its ministry.” *Locke*, 540 U.S. at 733, 124 S.Ct. 1307 (Scalia, J., dissenting). Yet *Locke* held that this discrimination against students pursuing ministerial degrees did not violate the Free Exercise Clause. That holding rested on bad history and bad reasoning.¹

Locke recited the history of “popular uprisings against procuring taxpayer funds to support church leaders” as one justification for its decision. *Locke*, 540 U.S. at 722, 124 S.Ct. 1307. Justice Scalia debunked that account in dissent, explaining that the “history involved not the inclusion of religious ministers in public benefit programs

1. Even a great Chief Justice can err.

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like the one at issue here, but laws that singled them out for financial aid.” *Id.* at 727, 124 S.Ct. 1307.² And while “[o]ne can concede the Framers’ hostility to funding the clergy *specifically*, . . . that says nothing about whether the clergy had to be excluded from benefits the State made available to all.” *Id.* at 727, 124 S.Ct. 1307 (Scalia, J., dissenting). The difference between giving ministers special treatment and including them in programs available to everyone is one of kind, not degree. Founding-era opposition to special funding does not provide a historical basis for carving religion out of generally available benefits. *Cf. N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 47,

2. For example, the *Locke* majority pointed to James Madison’s famous *Memorial and Remonstrance* as evidence of the Framers’ disapproval of “state-supported clergy.” 540 U.S. at 722, 124 S.Ct. 1307. Madison’s *Remonstrance* attacked a proposed Virginia tax, titled “A Bill Establishing a Provision for Teachers of the Christian Religion,” the proceeds of which would directly support Christian teachers and ministers. *See* James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785), and A Bill Establishing a Provision for Teachers of the Christian Religion (1784), both reprinted in *Everson v. Bd. of Educ.*, 330 U.S. 1, 63-74, 67 S.Ct. 504, 91 L.Ed. 711 (1947) (appendices to dissent of Rutledge, J.). The bill “was a massive discrimination in favor of religious viewpoints,” not a neutral program that only incidentally benefitted religion. 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, 242 (2004). And Madison criticized the bill as unequal, “not because it allowed religious groups to participate in a generally available government program, but because the bill singled out religious entities for special benefits.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 854-55, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (Thomas, J., concurring).

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142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). Nor does history reveal any Founding-era practice of excluding clergy (or clergy in training) from generally available benefits. *See* Berg & Laycock, *Mistakes in Locke*, *supra*, at 244, 244 n.113; *Locke*, 540 U.S. at 727-28, 124 S.Ct. 1307 (Scalia, J., dissenting) (“No one would seriously contend . . . that the Framers would have barred ministers from using public roads on their way to church.”).

Locke compounded its historical error by misapplying precedent. The outcome of *Locke* should have been controlled by *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993), as Justice Scalia laid out in dissent. Washington’s program was not “neutral” because it “discriminate[d] against religion as such.” *Locke*, 540 U.S. at 726, 124 S.Ct. 1307 (Scalia, J., dissenting) (quoting *Lukumi*, 508 U.S. at 579, 113 S.Ct. 2217 (Blackmun, J., concurring in the judgment)). Under *Lukumi*, “[a] law burdening religious practice that is not neutral . . . must undergo the most rigorous of scrutiny.” 508 U.S. at 546, 113 S.Ct. 2217; *see id.* (“A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases.”). But the *Locke* court refused to apply *Lukumi* and resolved the case without applying any particular level of scrutiny. 540 U.S. at 720-25, 124 S.Ct. 1307.

Over the past decade, the Supreme Court has eroded *Locke*’s foundation. *See Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464, 137 S.Ct.

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2012, 198 L.Ed.2d 551 (2017); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 479-80, 140 S.Ct. 2246, 207 L.Ed.2d 679 (2020); *Carson v. Makin*, 596 U.S. 767, 786-89, 142 S.Ct. 1987, 213 L.Ed.2d 286 (2022). *Carson* makes the point. There, the Supreme Court held that discrimination based on religious status and discrimination based on religious use are equally “offensive to the Free Exercise Clause.” *Id.* at 787, 142 S.Ct. 1987. In so holding, it cabined *Locke* to its facts: “*Locke* cannot be read beyond its narrow focus on vocational religious degrees.” *Id.* at 789, 142 S.Ct. 1987. At this point, the Supreme Court has rejected or ignored every premise of *Locke* except its flawed historical analysis.³

3. For example, the *Locke* majority dismissed Washington’s religious discrimination as “mild[,]” and therefore not violative of the Free Exercise Clause. 540 U.S. at 720, 124 S.Ct. 1307. In dissent, Justice Scalia wrote: “The 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.” *Id.* at 731, 124 S.Ct. 1307. Today, the Supreme Court sounds more like Scalia’s dissent, making statements like “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19, 141 S.Ct. 63, 208 L.Ed.2d 206 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion)). Similarly, the Supreme Court has rejected the notion of “play in the joints” between the Free Exercise and Establishment Clauses—a notion on which the *Locke* majority heavily relied. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022) (“A natural reading [of the First Amendment] would seem to suggest the [religion] Clauses have ‘complementary’ purposes, not warring ones.”); *Espinoza*, 591 U.S. at 484-85, 140 S.Ct. 2246 (“[A state’s] interest in separating

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Locke was an outlier when decided. And it is even more of one today. Absent *Locke*, the Court’s more recent decisions in *Trinity Lutheran*, *Espinoza*, and *Carson* would require us to hold that Virginia’s program violates the Free Exercise Clause. But we are not yet free to ignore *Locke*.

II. THIS COURT CANNOT TREAT *LOCKE* AS IMPLICITLY OVERRULED

This case is materially indistinguishable from *Locke*. And, absent more guidance from the Supreme Court, we may not declare *Locke* implicitly abrogated here.

I have observed that the Supreme Court has “recently suggested that a case need not be expressly overruled when the Court has given every indication that the case has been abandoned.” *Planned Parenthood S. Atl. v. Kerr*, 95 F.4th 152, 170 n.2 (4th Cir. 2024) (Richardson, J., concurring); see *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 377, 145 S.Ct. 2219, 222 L.Ed.2d 567 (2025); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022). *Locke* may be next.⁴ It fits the Supreme Court’s pattern of whittling away at cases before recognizing them as abrogated. See Curtis Bradley & Tara Leigh Grove, *Disfavored Supreme Court*

church and State ‘more fiercely’ than the Federal Constitution . . . ‘cannot qualify as compelling’ in the face of the infringement of free exercise.” (quoting *Trinity Lutheran*, 582 U.S. at 466, 137 S.Ct. 2012) (cleaned up)).

4. See Frederick Claybrook, *Is Locke the Next Supreme Court Decision the Lower Courts Should Ignore?*, Federalist Society Blog (July 2, 2025).

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Precedent in the Lower Federal Courts, 111 Va. L. Rev. 1353, 1355-56 (2025).

But even if *Locke* is next, what are lower courts to do? Should we read *Kennedy* and *Medina* as an invitation to treat disfavored precedents as implicitly overruled? That is hard to square with the command that “[i]f a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989); *see also Agostini v. Felton*, 521 U.S. 203, 237, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997); *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136, 143 S.Ct. 2028, 216 L.Ed.2d 815 (2023). So “it remains unclear whether recognizing abandonment remains solely within the prerogative of the Supreme Court.” *Kerr*, 95 F.4th at 170 n.2 (Richardson, J., concurring).⁵

5. One could also consider this issue by analogizing the overturning of a Supreme Court case with murder. The “murderer” kills the case. And the Supreme Court is the only acceptable murderer in our system of strict vertical stare decisis. Yet the murderer is different from the coroner. The coroner declares the case dead. The question in light of *Kennedy* and *Medina* is not whether lower courts can be murderers—they obviously can’t. Instead, the question is whether the Supreme Court is the sole coroner, or whether lower courts may sometimes assume that role. If they can, it raises more questions. When may lower courts assume the coroner role? How should they perform that role? What signals from the Supreme Court reveal that a precedent is a dead letter?

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But lower courts should not treat uncertainty as license to ignore binding precedent. “Vertical stare decisis is an inflexible rule that admits of no exception.” Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 Tex. L. Rev. 1711, 1712 (2013). In our hierarchical system, “lower courts cannot *alter or overrule* [the Supreme] Court’s precedents.” *Trump v. Boyle*, ___ U.S. ___, 145 S. Ct. 2653, 2655, 222 L.Ed.2d 1181 (2025) (Kavanaugh, J., concurring) (emphasis added); *see also Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, ___ U.S. ___, 145 S. Ct. 2658, 2663, 222 L.Ed.2d 1191 (2025) (Gorsuch, J., concurring in part and dissenting in part). One could imagine a different system,⁶ but that doesn’t change the one we have. As of today, the Supreme Court has not told us that *Locke* is no longer law. True, the Court has narrowed *Locke*⁷ to

6. Before *Rodriguez de Quijas*, whether and to what extent lower courts should follow disfavored precedent was “vigorously debated.” C. Steven Bradford, *Following Dead Precedent: The Supreme Court’s Ill-Advised Rejection of Anticipatory Overruling*, 59 Fordham L. Rev. 39, 43 (1990). And scholars continue to disagree about whether *Rodriguez de Quijas* took the correct approach. Compare Bradley Scott Shannon, *Overruled by Implication*, 33 Seattle U. L. Rev. 151 (2009), and A. Christopher Bryant & Kimberly Breedon, *How the Prohibition on “Under-Ruling” Distorts the Judicial Function (and What To Do About It)*, 45 Pepperdine L. Rev. 505 (2018), with Bradley & Grove, *Disfavored Precedent*, *supra*.

7. Professors Bradley and Grove identify five ways the Supreme Court disfavors its own precedent: “(1) disparaging statements in subsequent opinions; (2) decisions that distinguish or narrow an earlier decision; (3) failure to cite a precedent; (4) decisions in related areas that seem inconsistent with the earlier precedent; and (5) methodological shifts that seem to undermine

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the point that I would not extend it to any novel setting. But even in that narrowed form, *Locke* “directly controls” this case. *Rodriguez de Quijas*, 490 U.S. at 484, 109 S.Ct. 1917. So until the Supreme Court tells us to start reading tea leaves, I will not.

* * *

Locke v. Davey is a stain on our Free Exercise jurisprudence. And the Supreme Court has all but confined it to its facts. But until the Court formally buries *Locke*, we lower-court judges must keep applying it.

the foundations of a precedent.” Bradley & Grove, *Disfavored Precedent*, *supra* at 1359. Under their proposed approach to disfavored precedent, vertical stare decisis permits lower courts to “rely *only* on the first and second categories, and *only* to the extent that the Supreme Court has criticized, distinguished, or narrowed its precedent in binding decisions.” *Id.* But even using this approach, *Locke* would control here. The Supreme Court’s binding decisions have not directly disparaged *Locke* but narrowed it. That narrowing tells us to cease applying *Locke* in many contexts but to continue applying *Locke* to the extent its narrowed reach still controls.

**APPENDIX B — MEMORANDUM ORDER OF
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA,
FILED MAY 9, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil No. 3:25cv186 (DJN)

BETHANY M. HALL,

Plaintiff,

v.

A. SCOTT FLEMING, IN HIS OFFICIAL CAPACITY
AS DIRECTOR OF THE STATE COUNCIL OF
HIGHER EDUCATION FOR VIRGINIA,

Defendants.

Filed May 9, 2025

**MEMORANDUM ORDER
(Granting Motion to Dismiss)**

Plaintiff Bethany M. Hall (“Plaintiff”) brings this action against Defendant A. Scott Fleming (“Defendant”), in his official capacity as Director of the State Council of Higher Education for Virginia, asserting a claim pursuant to 42 U.S.C. § 1983 for violation of the Free Exercise

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Clause of the United States Constitution (“Free Exercise Clause”). Specifically, Plaintiff contends that Defendant’s “refusal to provide a generally applicable government benefit” in the form of a tuition assistance grant “solely because of religion violates the Free Exercise Clause.” (ECF No. 1 (“Compl.”) at 1-2.) This matter comes before the Court on Defendant’s Motion to Dismiss (ECF No. 9 (“Motion”).) For the reasons set forth below, the Court hereby GRANTS Defendant’s Motion to Dismiss (ECF No. 9).

I. BACKGROUND

At this stage, the Court must accept as true the facts set forth in the Complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Against this backdrop, the Court accepts the following facts as alleged for purposes of resolving the instant Motion.

Plaintiff is a Virginia citizen and a full-time sophomore student at Liberty University (“Liberty”) in Lynchburg, Virginia. (Compl. ¶ 5.) Defendant is the Director of the State Council of Higher Education for Virginia (“SCHEV”) and stands responsible for distribution and retraction of grants under Virginia’s Tuition Assistance Grant Program (“VTAG Program”). (*Id.* ¶ 6.) Defendant administers the Program and is authorized to issue regulations for its operation. (*Id.* ¶¶ 7-8.) Virginia Code Section 23.1-628 limits eligibility for VTAG grants to “nonprofit private institutions of higher education whose primary purpose is to provide collegiate, graduate, or professional education and not provide religious training

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or theological education.” (*Id.* ¶ 10.) Plaintiff alleges that although Liberty provides courses in religious training and theological education, Defendant and SCHEV have considered Liberty to be an “eligible institution” for the VTAG Program. (*Id.* ¶¶ 11-13.) The VTAG Program limits grants to students “obligated to pay tuition as full-time undergraduate, graduate or professional students” while pursuing “educational programs other than those providing religious training or theological education.” (*Id.* ¶ 14 (quoting Va. Code § 23.1-631).) Plaintiff alleges that, at all times relevant to her Complaint, she was an eligible student at an eligible institution under the Program. (*Id.* ¶ 15.)

During her senior year of high school, Plaintiff applied and received admission to Liberty for the 2023-2024 school year. (*Id.* ¶ 21.) On January 30, 2023, she applied for VTAG Program assistance. (*Id.* ¶ 22.) On February 8, 2023, Liberty’s Financial Aid Office notified Plaintiff that she had been accepted to receive the maximum VTAG grant, up to \$5,000. (*Id.* ¶ 23.) In June 2023, Plaintiff identified her intended major as “Music Education: Choral,” which does not constitute a VTAG-ineligible CIP Code 39 program. (*Id.* ¶ 24.) In early August 2023, Plaintiff informed Liberty that she intended to change her major to “Youth Ministries.” (*Id.* ¶ 25.) Subsequently, on August 10, 2023, Liberty’s Financial Aid Office informed Plaintiff that she had become ineligible for VTAG assistance, because “Youth Ministries” constitutes a CIP Code 39 program. (*Id.*) In late August 2023, Plaintiff again changed her major to “Christian Leadership and Church Ministries,” which also constitutes an ineligible CIP Code 39 program.

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(*Id.* ¶ 26.) Then, in mid-October 2023, she informed Liberty that she had changed her major to “Music and Worship,” with a focus on “Youth Ministries.” (*Id.* ¶ 28.) On October 31, 2023, the Financial Aid Office informed Plaintiff that “Music and Worship” is an ineligible CIP Code 39 program, and she subsequently did not receive a VTAG grant for the 2023-2024 school year. (*Id.* ¶ 29.)

Plaintiff completed her first year at Liberty and remains enrolled as a full-time student with a “Music and Worship” major for the 2024-2025 school year. (*Id.* ¶ 30.) Her VTAG Program grant has never been reinstated, and she has never rescinded her application. (*Id.*) As a result, Plaintiff “has personally paid Liberty [] the amounts that the rescinded VTAG Program grant would otherwise have covered.” (*Id.* ¶ 31.) On December 20, 2024, Liberty’s Financial Aid Office confirmed that “Music and Worship” remains an ineligible major for VTAG grants. (*Id.* ¶ 32.) She has not received a grant for the 2024-2025 school year. (*Id.*) Plaintiff alleges that she “remains eligible for a VTAG Program grant in all respects other than the religious nature of her major.” (*Id.* ¶ 35.) She states that she has forfeited the grant rather than change her major “because of her belief and conviction that God is calling her to minister through music and worship to youth.” (*Id.* ¶ 36.) Plaintiff further alleges that this violation of her free exercise of religion “is per se an irreparable injury.” (*Id.* ¶ 37.)

Plaintiff’s Complaint asserts a single count pursuant to 42 U.S.C. § 1983 for violation of the Free Exercise Clause. (*Id.* ¶¶ 39-51.) Specifically, Plaintiff alleges that

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the Free Exercise Clause of the First Amendment, made applicable to the states via the Fourteenth Amendment, prevents state actors from denying generally applicable benefits to an individual solely because of her religious practice or the religious nature of the benefit's intended use. (*Id.* ¶¶ 43-47.) Plaintiff contends that Defendant's retraction of her VTAG grant and her ineligibility for assistance violates the Free Exercise Clause. (*Id.* ¶ 48.) Plaintiff also argues that *Locke v. Davey*, 540 U.S. 712 (2004), "was wrongly decided and is inconsistent with" the Supreme Court's later decisions. (*Id.* ¶ 49.) Plaintiff contends that these decisions "effectively abrogated and overruled *Locke*" and thus "*Locke* should now be explicitly overruled." (*Id.* ¶¶ 49-50.)

In her Prayer for Relief, Plaintiff seeks the following: (1) a declaration that Virginia Code Section 23.1-631(A) violates the Free Exercise Clause rights of students pursuing religious training or theological education; (2) a declaration that Virginia Administrative Code Section 40-71-10 is unconstitutional, because it classifies programs providing religious training or theological education as ineligible for VTAG grants; (3) an injunction enjoining Defendant from withholding VTAG funds from Plaintiff due to her selection of major; (4) an injunction requiring Defendant to pay all amounts equal to the VTAG funds that she would have received but for her major selection from the 2023-2024 academic year to the present; (5) attorneys' fees and costs; and (6) all other just and equitable relief. (*Id.* at 11.) Plaintiff filed her Complaint on March 7, 2025. (ECF No. 1.) Defendant timely filed the instant Motion on April 14, 2025. (ECF No. 9.) On April

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24, 2025, Plaintiff filed her Opposition to the Motion. (ECF No. 12.) Defendant then filed his Reply on April 29, 2025. (ECF No. 13.) The matter now stands ripe for judicial review.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of a complaint; it does not serve as the means by which a court will resolve factual contests or determine the merits of a claim. *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). In considering a motion to dismiss, the Court accepts the well-pleaded allegations in the complaint as true and views the facts in the light most favorable to the plaintiff. *Mylan Lab'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). Under Federal Rule of Civil Procedure 8(a), a complaint must state facts sufficient to “ ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’ ” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Ultimately, the “[f]actual allegations must be enough to raise a right to relief above the speculative level,” rendering the right “plausible on its face” rather than merely “conceivable.” *Id.* at 555, 570. The facts must be sufficient to “state all the elements of [any] claim[s].” *Bass v. E.I DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003). On a 12(b)(6) motion to dismiss, a court may consider “documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).

*Appendix B***III. ANALYSIS**

In his Motion, Defendant asserts that the Supreme Court’s decision in *Locke v. Davey*, 540 U.S. 712 (2004) “is on all fours with the facts of this case and squarely forecloses [Plaintiff’s] claim.” (ECF No. 10 (“Mem.”) at 7.) Plaintiff asserts that *Locke* “was wrongly decided and is inconsistent with” the Supreme Court’s later decisions and contends that “*Locke* should now be explicitly overruled.” (Compl. ¶¶ 49-50.) Nevertheless, Plaintiff effectively concedes that her situation aligns with the one faced by the undergraduate student pursuing a religious vocation major in *Locke*, and she expressly agrees with Defendant’s contention that “*Locke* is still good law, and it is binding on this Court.” (ECF No. 12 (“Opp.”) at 1 (quoting Mem. at 7).) Because *Locke* remains binding Supreme Court precedent and this Court lacks the authority to overrule such precedent, the Court hereby GRANTS Defendant’s Motion to Dismiss (ECF No. 9).

A brief review of *Locke* and the Supreme Court’s subsequent Free Exercise decisions compels this Court’s dismissal of Plaintiff’s Complaint. In *Locke*, Joshua Davey (“Davey”) challenged a Washington statute which provided tuition assistance for college students pursuing non-religious degrees. 540 U.S. at 718. Davey, who “decided to pursue a double major in pastoral ministries and business management/administration,” was informed by his college’s director of financial aid that he could not use the scholarship for his theology degree. *Id.* at 717. Citing state constitutions from “around the time of the founding” that included “formal prohibitions against using

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tax funds to support the ministry,” the Supreme Court found nothing “that suggests animus toward religion” in the Washington statute and could not “conclude that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect.” *Id.* at 723, 725. Because the state “merely chose[] not to fund a distinct category of instruction” and did “not require students to choose between their religious beliefs and receiving a government benefit,” the law did not violate the Free Exercise Clause. *Id.* at 720-21.

Here, Plaintiff’s situation stands directly analogous to Davey’s. Plaintiff, like Davey, opted to pursue a major in a religious vocation while completing her undergraduate studies. (Compl. ¶¶ 25-26, 28, 30); *Locke*, 540 U.S. at 717. As a result of this choice, Plaintiff, like Davey, became ineligible for state tuition assistance. (Compl. ¶¶ 25-26, 29-30, 32); *Locke*, 540 U.S. at 717. Both Plaintiff and Davey brought suits contending that laws barring state tuition assistance for students pursuing majors in a religious vocation violate the Free Exercise Clause. (Compl. ¶¶ 39-51); *Locke*, 540 U.S. at 718. Further, the state laws at issue in both cases allow tuition assistance for students attending religious *universities* or taking religious *courses*, as long the funding does not go toward religious *majors*. (Compl. ¶¶ 12-13); *see* 8 Va. Admin. Code § 40-71-10 (allowing VTAG grant for double-major program including religious vocational studies under specific conditions); *Locke*, 540 U.S. at 724 & n.8 (noting that “Washington has also been solicitous in ensuring that its constitution is not hostile towards religion,” including by allowing students to receive funding while

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attending religious schools). While Plaintiff may contend that *Locke* “was wrongly decided,” the factual and legal circumstances of her case mirror those presented in that binding Supreme Court precedent. (Compl. ¶ 49.)

Furthermore, contrary to Plaintiff’s assertion that the Supreme Court’s subsequent Free Exercise decisions “effectively abrogated and overruled *Locke*,” these cases instead reaffirm *Locke*’s holding and support its application to the instant case. (Compl. ¶ 49.) First, in *Trinity Lutheran Church of Colombia, Inc. v. Comer*, 582 U.S. 449 (2017), the Court distinguished *Locke* while holding that a Missouri law that disqualified churches and religious organizations from receiving grants under a playground resurfacing program violated the Free Exercise Clause. *Id.* at 464-67. Specifically, the Court noted that “Davey was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed *to do*—use the funds to prepare for the ministry.” *Id.* at 464. By contrast, Missouri’s law impermissibly denied a Lutheran church funding “simply because of what it is—a church.” *Id.* In essence, the church was required to “renounce its religious character in order to participate in an otherwise generally available public benefit program,” while Davey was free to attend a religious college and take religious courses as long as he did not use funding “to pursue a degree in [devotional theology].” *Id.* at 465-66. In distinguishing *Trinity Lutheran* from *Locke*, the Supreme Court did not abrogate its precedent; rather, the Court reinforced that “opposition to . . . funding to support church leaders lay[s] at the historic core of the Religion Clauses.” *Id.* at 465.

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In *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), the Supreme Court again distinguished, without overruling, *Locke* in holding that application of Montana’s constitutional “no-aid provision” to prohibit state tuition assistance at religious schools violated the Free Exercise Clause. *Id.* at 468, 488-89. The Court highlighted two key distinctions between *Locke* and *Espinoza*. *Id.* at 479-83. First, while the Washington law in *Locke* had “merely chosen not to fund a distinct category of instruction”—religious vocational training—Montana’s no-aid provision “bar[red] all aid to a religious school simply because of what it is, putting the school to a choice between being religious or receiving government benefits.” *Id.* at 479-80; *Locke*, 540 U.S. at 721. “Second, *Locke* invoked a ‘historic and substantial’ state interest in not funding the training of clergy.” *Espinoza*, 591 U.S. at 480 (quoting *Locke*, 540 U.S. at 725). By contrast, “no comparable ‘historic and substantial’ tradition support[ed] Montana’s decision to disqualify religious schools from government aid.” *Id.* Once again, rather than overrule *Locke*, the Supreme Court in *Espinoza* reinforced its holding that a prohibition on the use of state funds for religious vocational education did not violate the Free Exercise Clause.

Lastly, in *Carson as next friend of O.C. v. Makin*, 596 U.S. 767 (2022), the Supreme Court again emphasized that “the funding in *Locke* was intended to be used to prepare for the ministry.” *Id.* at 788. “Funds could be and were used for theology courses; only pursuing a ‘vocational religious’ degree was excluded,” and therefore the Washington program did not violate the Free Exercise Clause. *Id.*

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(quoting *Locke*, 540 U.S. at 725). However, the Court noted that “*Locke* cannot be read beyond its narrow focus on vocational religious degrees to generally authorize the State to exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” *Id.* at 789. As a result, the Court held that Maine’s prohibition on tuition assistance payments to students who chose to attend sectarian secondary schools violated the Free Exercise Clause. *Id.*

Thus, review of the Supreme Court’s recent Free Exercise jurisprudence clearly rebuts Plaintiff’s contention that these cases “effectively abrogated and overruled *Locke*.” (Compl. ¶ 49.) Rather, as Defendant points out, “the Supreme Court has repeatedly affirmed that *Locke* is good law that permits states to decline to fund religious training.” (Mem. at 9.) Following these cases, prohibitions on state tuition assistance for religious vocational training, such as Plaintiff’s chosen course of study at Liberty, remain permissible under the Free Exercise Clause. Even if the Court agreed with Plaintiff—which it does not—that the Supreme Court “effectively abrogated” *Locke* in these recent cases, the Court stands bound to follow binding Supreme Court precedent that remains good law. See *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (holding that lower courts “should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions”). Plaintiff suggests that while the Supreme Court has never explicitly overturned *Locke*, it has “drop[ped] hints that it has nonetheless abandoned that precedent” and its underlying rationale.

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(Opp. at 2.) However, as the Fourth Circuit has noted, lower courts “must simply apply the[] commands” of Supreme Court precedent. *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021). Quite simply, “[i]t is beyond [this Court’s] power to disregard a Supreme Court decision, even if [it appeared that] the Supreme Court is soon to overrule it.” *Id.*

Accordingly, applying the binding Supreme Court precedent established in *Locke*, the Court finds that Defendant’s application of the VTAG Program does not violate the Free Exercise Clause by prohibiting the use of state funds for Plaintiff’s religious vocational studies. Therefore, Plaintiff fails to state a claim and the Court GRANTS Defendant’s Motion.

IV. CONCLUSION

For the reasons set forth above, the Court hereby GRANTS Defendant’s Motion to Dismiss (ECF No. 9) and DISMISSES this case WITH PREJUDICE. Because the Court must apply the Supreme Court’s binding precedent in *Locke*, any amendment to Plaintiff’s Complaint would be futile. Accordingly, the Court does not grant leave to amend and this Order qualifies as final and appealable. *See Britt v. DeJoy*, 45 F.4th 790, 796 (4th Cir. 2022) (holding that an order dismissing a case without leave to amend is final and appealable). Should Plaintiff desire to appeal, written notice of appeal must be filed with the Clerk of the Court within thirty (30) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the right to appeal. Fed. R. App. P. 4.

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The Court DIRECTS the Clerk's Office to close this case.

This case is now CLOSED.

Let the Clerk file a copy of this Memorandum Order electronically and notify all counsel of record.

It is so ORDERED.

/s/ David J. Novak
David J. Novak
United States District Judge

Richmond, Virginia
Dated: May 9, 2025

**APPENDIX C — CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

U.S. Const. Amend. I

Amendment I. Establishment of Religion;
Free Exercise of Religion; Freedom
of Speech and the Press; Peaceful Assembly;
Petition for Redress of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

U.S. Const. Amend. XIV

Amendment XIV. Citizenship;
Privileges and Immunities; Due Process;
Equal Protection; Appointment of Representation;
Disqualification of Officers; Public Debt; Enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny

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to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

* * *

28 U.S.C. § 1331. Federal question

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

* * *

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VA Code Ann. § 23.1-628.
Tuition Assistance Grant Program

Effective: October 1, 2016

A. As used in this article, unless the context requires a different meaning:

“Eligible institution” 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.

“Grant” means a Tuition Assistance Grant.

“Principal place of business” means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the institution as a whole primarily exercise that function, considering the following factors: (i) the state in which the primary executive and administrative offices of the institution are located; (ii) the state in which the principal office of the chief executive officer of the institution is located; (iii) the state in which the board of trustees or similar governing board of the institution conducts a majority of its meetings; and (iv) the state from which the overall operations of the institution are directed.

“Program” means the Tuition Assistance Grant Program.

B. From such funds as may be provided for such purpose, the Tuition Assistance Grant Program is established to provide Tuition Assistance Grants to or on behalf of Virginia students who attend eligible institutions.

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C. Eligible institutions admitted to this program on or after January 1, 2011, shall (i) be formed, chartered, established, or incorporated within the Commonwealth; (ii) have their principal place of business within the Commonwealth; (iii) conduct their primary educational activity within the Commonwealth; and (iv) be accredited by a nationally recognized regional accrediting agency.

* * *

VA Code Ann. § 23.1-631.

Eligibility; duration

Effective: October 1, 2016

A. Virginia students who are obligated to pay tuition as full-time undergraduate, graduate, or professional students at an eligible institution are eligible to receive a grant for the academic year for which they enroll.

B. Eligibility for grants under the Program is limited to a total of four academic years for undergraduate students, pharmacy students, and medical students and a total of three academic years for other graduate students and professional school students. The academic years for which grants are awarded need not be in succession.

C. Grants under the Program shall be used only for undergraduate, graduate, or professional collegiate work in educational programs other than those providing religious training or theological education.

* * *

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8 VAC 40-71-10. Definitions

Effective: August 1, 2022

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Academic year” means the enrollment period that normally extends from late August to May or early June and that is normally comprised of two semesters 15 to 16 weeks in length or three quarters 10 to 11 weeks in length.

“Accredited” means approved to confer degrees pursuant to the provisions of Article 3 (§ 23.1-213 et seq.) of Chapter 2 of Title 23.1 of the Code of Virginia and requirements of the annual appropriation act, as the same are now constituted or hereafter amended. Unless otherwise provided by law, an institution must be accredited by a nationally recognized regional accrediting agency prior to participation in the program.

“Award” means a grant of Virginia Tuition Assistance Grant Program funds given during fall and spring terms at semester institutions and fall, winter, and spring terms at quarter institutions.

“Census date” means the time during a term when a count of enrolled students is made for reporting purposes. For all standard terms, the census date shall be the end of the program add/drop period. For nonstandard terms, the census date shall be determined by council on a program by program basis.

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“Cost of attendance” means the sum of tuition, fees, room, board, books, supplies, and other education-related expenses, as determined by an eligible institution for purposes of calculating a student’s financial need and awarding federal student aid funds.

“Council” or *“SCHEV”* means the State Council of Higher Education for Virginia or its designated staff.

“Domiciliary resident” means a student who is determined by the enrolling institution to be a domiciliary resident of Virginia under § 23.1-502 of the Code of Virginia and augmented by the Domicile Guidelines or provided the equivalent educational benefits of the same under § 23.1-505 or 23.1-505.1 of the Code of Virginia. In cases where there are disputes between students and the enrolling institutions, the council shall make the final determinations (see 8VAC40-71-40 E).

“Eligible institution” means private nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education. Eligible institutions not admitted to this program before January 1, 2011, shall also:

1. Be formed, chartered, established, or incorporated within the Commonwealth;
2. Have their principal place of business within the Commonwealth;

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3. Conduct their primary educational activity within the Commonwealth;
4. Be accredited by a nationally recognized regional accrediting agency; and
5. Comply with applicable reporting requirements as:
 - a. Found in the Code of Virginia or supporting administrative code for institutions operating in Virginia or participating in state financial aid programs; or
 - b. Identified by the council as necessary for the administration of the program.

“Eligible program” means a curriculum of courses at the undergraduate, graduate, or first professional level for those institutions eligible under the definition of eligible institution. For those institutions chartered under an act of Congress and admitted to this program prior to January 1, 2011, only a curriculum of courses offered at a campus located in the Commonwealth are eligible programs.

1. Undergraduate programs are those programs that lead to an associate’s or baccalaureate degree and that require at least two academic years (minimum 60 semester hours or its equivalent in quarter hours) to complete or an undergraduate teacher certification program.

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2. Graduate programs are those programs leading to a degree higher in level than the baccalaureate degree and that require at least one academic year (minimum 30 semester hours or its equivalent in quarter hours) to complete. Only graduate programs in a health-related professional program classified in the National Center for Education Statistics' Classification of Instructional Programs (CIP) Code 51-series programs are eligible graduate programs.
3. First-professional programs are those post-undergraduate programs leading to a degree in dentistry, medicine, veterinary medicine, or pharmacy. Only professional programs in a health-related professional program classified as CIP Code 51-series programs are eligible first-professional programs.
4. Programs that provide religious training or theological education, classified as CIP Code 39-series programs, are not eligible programs.
5. Students enrolled in a declared double-major that includes an ineligible degree program may receive an award only for those terms in which the student's enrollment includes an equal or greater number of courses required for an eligible major or concentration than the number of courses enrolled for an ineligible major or concentration (excludes general education or elective courses). Exceptions may be made by council based on circumstances beyond the control of the student.

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“First-professional student” means a student enrolled and program placed in any of the following post-undergraduate programs: dentistry, medicine, veterinary medicine, or pharmacy.

“Fiscal year” means the period extending from July 1 to June 30.

“Formed, chartered, established, or incorporated within the Commonwealth” means the institution is, and continues to be, recognized as a domestic or in-state institution under the council’s certification to operate in Virginia and under state law.

“Full-time student” means a student who is enrolled for at least 12 credit hours per semester or its equivalent in quarter hours at the undergraduate level or nine credit hours per semester or its equivalent in quarter hours at the graduate or first-professional level. The total hours counted do not include courses taken for audit, but may include required developmental, remedial, or prerequisite courses and other elective for-credit courses that normally are not counted toward a degree at the institution. For students enrolled in:

1. Nonstandard terms: the full-time enrollment requirement, as approved by council, will be proportionate based on the length of the terms, the number of contact hours, or other measures of comparability with the institution’s normal academic year.

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2. Concurrent undergraduate, graduate, or first-professional courses: the full-time enrollment requirement may be met by a combination of the total credit hours, providing that the combination totals at least the minimum credit hours for full-time status, as described above, for the student's institutionally recognized student level.

3. Programs leading to a doctoral degree: the full-time enrollment requirement may be met by enrollment in nine credit hours per semester or its equivalent in quarter hours or the minimum full-time enrollment as defined by the institution, whichever is less.

“Graduate student” means a student enrolled and program-placed in a master’s or doctoral program.

“Nonprofit institution” means an educational institution operated by one or more nonprofit corporations, and said institution’s earnings are applied solely to the support of said institution and its educational programs and activities.

“Nonstandard degree program” means a degree program where the terms of the program do not conform to the standard terms of the institution’s academic year. Nonstandard programs must be approved by council before students enrolled in the programs can receive awards.

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“Participating eligible institution” means an eligible institution that has been approved to participate in the program by council.

“Principle place of business” means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the institution as a whole primarily exercise that function considering the following factors:

1. The state in which the primary executive and administrative offices of the institution are located. The primary executive and administrative offices are those most often physically used in the performance of the executive and administrative functions of the institution;
2. The state in which the principal office of the chief executive officer of the institution is located. The principal office of the chief executive officer is the location that is most often physically occupied by the chief executive officer when in performance of official institution duties;
3. The state in which the board of trustees or similar governing person or persons of the institution conducts a majority of its meetings; and

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4. The state from which the overall operations of the institution are directed in that the institution is not subject to control or directives from an office, agency, or board located within another state.

“Program” means the Virginia Tuition Assistance Grant Program.

“Term” means the fall semester or quarter, winter quarter, or the spring semester or quarter.

“Undergraduate student” means a student in a program leading to an associate’s or baccalaureate degree or a student enrolled in an undergraduate teacher certification program.

“VTAG” means the Virginia Tuition Assistance Grant.