

No. _____

IN THE
Supreme Court of the United States

CAMERON JOHNSON; LUKE THOMAS; TRACE STEVENS,
Petitioners,

v.

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

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

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

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QUESTIONS PRESENTED

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

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

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

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

PARTIES TO THE PROCEEDING

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

Respondents are A. Scott Fleming, in his official capacity as the Director of the State Council of Higher Education for Virginia; John Jumper, in his official capacity as the Chair of the State Council of Higher Education for Virginia; Major General James W. Ring, in his official capacity as the Adjutant General of Virginia; and Donald L. Unmussig, in his official capacity as the Chief Financial Officer of the Virginia Department of Military Affairs.

LIST OF ALL PROCEEDINGS

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

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

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DECISIONS BELOW

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

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

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

STATEMENT OF JURISDICTION

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

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

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

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

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

PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF THE CASE

I. Virginia’s grant programs

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

A. Virginia Tuition Assistance Grant Program

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

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

First, students must attend “an eligible institution,” defined as “a nonprofit private institution of higher education whose primary purpose is to provide collegiate, graduate, or professional education and not to provide *religious training or theological education*.” Va. Code § 23.1-628(A) (emphasis added). Here, the students attend Liberty University, which is an eligible institution. VTAG Summary, *supra* (listing eligible institutions).

Second, students must study “in an eligible program,” 8 Va. Admin. Code § 40-71-40(C)(2), which includes “undergraduate, graduate, or professional collegiate work in educational programs other than those providing *religious training or theological education*.” Va. Code § 23.1-631(C) (emphasis added). The State Council narrows this exclusion to “CIP [Classification of Instructional Programs] Code 39-series programs,” 8 Va. Admin. Code § 40-71-10, outlined by the National Center for Education Statistics (NCES), an arm of the U.S. Department of Education. *About IES*, INST. OF EDUC. SCIENCES, perma.cc/9SSH-NTKS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Virginia National Guard State Tuition Assistance Program

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

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

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

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

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

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

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

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

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

II. Virginia denies Petitioners' grant requests.

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

A. Cameron Johnson

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

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

B. Luke Thomas

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

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

C. Trace Stevens

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

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

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

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

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

III. Procedural history

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

Nearly eight months after briefing completed, the district court denied a preliminary injunction and dismissed Cameron’s and Luke’s claims. App.27a–28a. The court reasoned that “so long as *Locke* remains good law, [Cameron’s and Luke’s claims]

against the State Council Defendants, as administrators of the VTAG Program, must fail.” App.11a. The court “suspect[ed] that *Locke* also dooms [Trace’s] claims against the administrators of [VANGSTAP]” but declined to dismiss his claims because of “the limited factual record.” *Ibid.*

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

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

REASONS FOR GRANTING THE PETITION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. *Locke* should be overruled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Stare decisis is no impediment.

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

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

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

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

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

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

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

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

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

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

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

IV. This case is an ideal vehicle.

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

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

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

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

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

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

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

V. Certiorari before judgment is warranted.

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

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

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

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

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

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CAMERON JOHNSON,	)	
<i>et al.</i> ,	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	3:25CV407 (RCY)
A. SCOTT FLEMING, <i>et</i>	)	
<i>al.</i> ,	)	
Defendants.	)	

MEMORANDUM OPINION

This is a civil rights action brought by Plaintiffs, current and prospective Liberty University students, against the administrators of two public grant programs: the Virginia Tuition Assistance Grant (“VTAG”) Program and the Virginia National Guard State Tuition Assistance Program (“STAP”). Plaintiffs bring three claims alleging violations of the Free Exercise, “Religion,” and Equal Protection Clauses of the United States Constitution. The case is before the Court on Defendants’ Motion to Dismiss and Plaintiffs’ Motion for Preliminary Injunction. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court, and oral argument would not aid in the decisional process. E.D. Va. Loc. Civ. R. 7(J). For the reasons stated below, the Court will grant the Motion to Dismiss in part and deny the Motion for Preliminary Injunction.

I. STANDARD OF REVIEW

“A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Megaro v. McCollum*, 66 F.4th 151, 157 (4th Cir. 2023) (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)). Federal Rule of Civil Procedure 8 only requires that a complaint set forth “a short and plain statement of the claim showing that the pleader is entitled to relief,” in order 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)). While the complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level,” “detailed factual allegations” are not required in order to satisfy the pleading requirement of Federal Rule 8(a)(2). *Id.* (citations omitted). The plaintiff’s well-pleaded allegations are assumed to be true, and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993) (citations omitted); *see also Martin*, 980 F.2d at 952. Such a standard, however, does not require the Court to accept any unreasonable inferences or a plaintiff’s legal conclusions. *Philips v. Pitt Cnty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* “Labels and conclusions,” a “formulaic recitation of the elements,” and “naked assertions” without factual enhancement are insufficient. *Id.* Also, where “a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989).

At the motion-to-dismiss stage, a court may consider the face of the complaint, documents attached to the complaint, and documents attached to the motion to dismiss that are integral to the complaint and whose authenticity is unchallenged. *Philips*, 572 F.3d at 180; *see also Phillips v. LCI Intern., Inc.*, 190 F.3d 609, 618 (4th Cir. 1999). Applying these standards, the Court construes the facts in the Complaint, including any attached documents, as follows.

II. BACKGROUND

Plaintiffs filed their Complaint (ECF No. 1) on May 28, 2025. Defendants jointly filed their Motion to Dismiss (ECF No. 19) and brief in support thereof (ECF No. 20) on June 23, 2025. Plaintiffs filed their Motion for Preliminary Injunction (ECF No. 22) and memorandum in support thereof (ECF No. 23) on June 27, 2025. Both motions have been fully briefed.

Plaintiffs subsequently filed a Notice of Supplemental Declarations in support of their Motion for Preliminary Injunction (ECF No. 30) on November 25, 2025.

A. Plaintiffs Cameron Johnson, Luke Thomas, and the VTAG Program

The VTAG Program provides non-need-based grants to Virginia residents who attend private, non-profit colleges or universities. Compl. ¶ 55 (citing Va. Code Ann. § 23.1-628 *et seq.*). The State Council of Higher Education for Virginia (“State Council”) administers the VTAG Program. *Id.* ¶¶ 3, 46; Va. Code Ann. § 23.1-629. Defendant Fleming serves as the director and chief executive officer of the State Council; Defendant Jumper serves as the State Council’s Chair (together, “State Council Defendants”). Compl. ¶¶ 42, 44.

By statute, 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 VTAG grant. *Id.* ¶ 56; Va. Code Ann. § 23.1-631. Implementing regulations for the VTAG Program require that an award recipient be “a full-time student in an eligible program at a participating eligible institution.” Compl. ¶ 62; 8 Va. Admin. Code § 40-71-40(C)(2). Both the governing statute and implementing regulation define an “eligible institution” as a private, nonprofit institution of higher education “whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.” Compl. ¶ 63; Va. Code Ann. § 23.1-628; 8 Va. Admin. Code § 40-71-10.

Liberty University is an eligible institution in the VTAG Program. Compl. ¶ 65.

For purposes of VTAG awards, “[p]rograms that provide religious training or theological education . . . are not eligible programs.” 8 Va. Admin. Code § 40-71-10; Compl. ¶ 67; *see also* Va. Code Ann. § 23.1-631(C). The State Council employs the Classification of Instructional Programs (“CIP”) coding system¹ in its administration of the VTAG Program. Compl. ¶¶ 68, 72. By regulation, CIP Code 39 programs provide religious training or theological education and are thus not VTAG-eligible programs. Compl. ¶ 68; 8 Va. Admin. Code § 40-71-10. The State Council does not, however, exclude CIP Code 38 programs, which are programs for “Philosophy and Religious” studies. Compl. ¶ 76. A student remains VTAG-eligible if she majors in an eligible program and minors in an ineligible program. Compl. ¶ 87. A student can also double major in an eligible program and an ineligible program and still receive a full VTAG award for the term, so long as that student takes an equal or greater number of courses for the eligible major than the number of courses for the ineligible major. Compl. ¶ 84; 8 Va. Admin. Code § 40-71-10. The State Council may make exceptions to the double-major rule “based on circumstances beyond the control of the student.” Compl. ¶ 86; 8 Va. Admin. Code § 40-71-10.

Plaintiff Cameron Johnson is a Christian with sincere religious beliefs rooted in the Holy Bible as the

¹ The CIP coding system was developed by the National Center for Education Statistics—an agency within the federal Department of Education—for the purpose of tracking and reporting on fields of study. Compl. 8 n. 2.

Word of God. Compl. ¶¶ 97–98. At age 15, Mr. Johnson believed that God was leading him to “go into ministry.” *Id.* ¶ 109. However, he “does not yet know whether this calling to ministry is a vocational calling, or a calling to minister to others in a secular career or workplace.” *Id.* ¶ 110. Mr. Johnson decided to major in Pastoral Leadership at Liberty University, which is classified as a CIP Code 39 program and thus ineligible for a VTAG award. *Id.* ¶¶ 114–15, 125. The State Council considers Liberty University’s Pastoral Leadership major a program for religious training or theological education, and so Plaintiff Johnson’s VTAG Program application was accordingly denied. *Id.* ¶¶ 124–28.

Plaintiff Luke Thomas is also a Christian with sincere religious beliefs rooted in the Holy Bible as the Word of God. Compl. ¶¶ 133–34. Around the time when he was a junior in high school, Mr. Thomas “believed that God wanted him to use his talents, at some point in his future, in the ministry field, perhaps as a worship pastor or director.” *Id.* ¶¶ 140–41. However, “he is still open to careers other than those strictly in vocational ministry.” *Id.* ¶ 45. Mr. Thomas intended to major in Music and Worship at Liberty University, which is classified as a CIP Code 39 program and thus ineligible for a VTAG award. *Id.* ¶¶ 143–45, 150–51. The State Council considers Liberty University’s Music and Worship major a program for religious training or theological education. *Id.* ¶ 155. Mr. Thomas declared a different music major at Liberty University that *is* considered an eligible program for VTAG purposes, but he still intends to change his major to Music and Worship and would

then “lose VTAG.” Pls.’ Not. Suppl. Decls. Attach. 2 ¶¶ 8–10.²

B. Plaintiff Trace Stevens and the Virginia National Guard STAP

The Virginia National Guard STAP offers grants to Virginia National Guard members to cover tuition costs remaining after receipt of other educational benefits. Compl. ¶ 13. STAP grant amounts are dependent on the amount of funds appropriated by the Virginia General Assembly. Compl. ¶ 159; Va. Code Ann. § 23.1-610(A). The Virginia Department of Military Affairs (“the Department”) administers STAP. Compl. ¶ 51. Defendant Major General James W. Ring is the Adjutant General of Virginia and, through that role, serves as the head of the Department; Defendant Donald L. Unmussig is the Department’s Chief Financial Officer (together, “Department Defendants”). *Id.* ¶¶ 47, 49.

Per the governing Virginia statute, any Virginia National Guard member is eligible for a STAP grant so long as he or she: (i) has a minimum remaining service obligation of two years; (ii) has satisfactorily completed required initial active duty service; (iii) is satisfactorily performing his or her National Guard

² Given that Plaintiffs submitted their Notice of Supplemental Declarations to update the Court on recent factual developments while the instant motions have been pending, the Court treats the Notice as a document attached to the Complaint. Defendants have not objected to the filing of Plaintiffs’ Notice. The Court utilizes the Notice in order to provide an accurate recitation of relevant facts. That said, no information contained in the Notice is ultimately dispositive for purposes of the Court’s rulings on the Motion to Dismiss or Motion for Preliminary Injunction.

duty; and (iv) is enrolled in and in good standing at any public institution of higher education or accredited nonprofit private institution of higher education “whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education” Compl. ¶ 158; Va. Code Ann. § 23.1-610(A).

Unlike the statutory provisions governing the VTAG Program, the STAP statute does not contain further eligibility restrictions based on a student’s chosen program at an appropriate institution. Compl. ¶ 167, Va. Code Ann. § 23.1-610. The Department has not adopted regulations or publicly available guidance explaining which degrees are for religious training or theological education. Compl. ¶ 173. Command Policy 22-023, used by the Department to administer STAP, states that “[i]n accordance with the Constitution of Virginia, Article I., Section 16, theological degrees are ineligible for [an] award (e.g., seminary school).” *Id.* ¶ 164; Compl. Ex. 5 § 7(a). On the Virginia National Guard State Tuition Assistance Program website, the Frequently Asked Questions webpage provides the following additional guidance:

In accordance with the Constitution of Virginia, Article I., Section 16, Religious and/or Theological Degrees are ineligible for STA[P] award. Religious requirement/elective courses may be eligible if the overall degree major/ minor is not religious or theological in nature.

Frequently Asked Questions, Virginia National Guard State Tuition Assistance Program, <https://state>

tuition.vangweb.com/faqs [https://perma.cc/92QP-FTQP]; *see also* Compl. ¶ 174.

The Department is statutorily authorized to “utilize grant funding in order to recruit qualified applicants for service in the Virginia National Guard.” Compl. ¶ 163; Va. Code Ann. § 23.1-610(D). Per Command Policy 22-023, appeal requests following denial of an application for a STAP grant may be submitted up to 15 days from the date of denial and are “reviewed on a case-by-case basis by the State Education Office.” Compl. Ex. 5 § 11(a). “Application denials based upon statutory language are not eligible for appeal.” *Id.*

Plaintiff Trace Stevens, like Mr. Johnson and Mr. Thomas, is a Christian with sincere religious beliefs rooted in the Holy Bible as the Word of God. Compl. ¶¶ 182–83. During his senior year of high school, Mr. Stevens “believed that God wanted him to pursue a college education to help prepare him for a future career in some type of ministry work.” *Id.* ¶ 189. A Virginia Army National Guard recruiter told Mr. Stevens that the National Guard and U.S. Army / Department of Defense could assist him with paying for college if he joined. *Id.* ¶¶ 192, 194. Mr. Stevens enlisted in the Virginia National Guard in May 2023, mainly to help him afford college. *Id.* ¶ 198. He originally sought a grant through the Virginia National Guard for an online ministerial leadership program at a Christian university in Florida. *Id.* ¶¶ 193, 199. The Department informed Mr. Stevens that this program “was ineligible because it was religious and was at an out-of-state college.” *Id.* ¶ 200. Defendant Ring confirmed via email that Mr. Stevens’s “desired theological degree program is

ineligible to receive funds from [STAP].” *Id.* ¶ 202; Compl. Ex. 6.

After returning from basic training, Mr. Stevens applied to Liberty University, hopeful he would be able to use a National Guard grant there. Compl. ¶ 205. He was accepted and decided to pursue a “Bachelor of Science in Religion (General Track)” because he “believe[d] God called him to pursue it” and because it would prepare him for a career in ministry and/or the Army. *Id.* ¶¶ 206–07. Mr. Stevens’s “primary plan is to become a chaplain in the military[,]” but he has other career interests as well. *Id.* ¶¶ 208–09. In July 2024, Mr. Stevens emailed the Department to ask if he would be eligible for a grant while attending Liberty University online. *Id.* ¶ 216. The Department responded that online programs at Liberty University were eligible, but “reiterated that the National Guard Grant could not be used for ‘religious degrees,’” although it “would possibly pay for a particular religious required course for another type of degree.” *Id.* ¶ 217; Compl. Ex. 7. In light of this guidance, Mr. Stevens did not apply for a grant through the National Guard for the fall 2024 semester. Compl. ¶ 219.

Mr. Stevens did ultimately choose to major in Religion, and he applied for a STAP grant for the spring 2025 semester. *Id.* ¶¶ 220, 223; Compl. Ex. 8. Mr. Stevens had learned that his Religion major, as a CIP Code 38 program, *was* eligible for VTAG. Compl. ¶ 223. Noting this inconsistency, Mr. Stevens again asked the Department whether he was eligible for a grant through the National Guard. *Id.* ¶ 224; Compl. Ex. 9. Defendant Unmussig emailed Mr. Stevens, explaining that STAP and VTAG are different grant

programs managed by different organizations and stating that the Department could not “violate the law” by awarding Mr. Stevens a grant using funds from STAP for his “degree in religion from Liberty University.” Compl. ¶ 227; Compl. Ex. 9. Mr. Stevens’s application for a STAP grant was ultimately denied. Compl. ¶ 15. He was, however, able to receive federal tuition assistance from the United States Army for his Religion (General Track) program at Liberty University. *Id.* ¶¶ 14, 17. Mr. Stevens now seeks a grant through the National Guard to pursue a Master of Divinity Degree at Liberty University. Pls.’ Not. Suppl. Decls. Attach. 1 ¶¶ 13–17.

III. ANALYSIS

Defendants seek dismissal of each of Plaintiffs’ three claims, insisting that denial of State grant funding for Plaintiffs’ pursuit of degrees in religious training or theological education is compatible with the Free Exercise, Establishment, and Equal Protection Clauses of the United States Constitution. Defendants argue that Plaintiffs’ Complaint fails to state any claim upon which relief can be granted because United States Supreme Court precedent embodied in *Locke v. Davey* forecloses all three counts. 540 U.S. 712 (2004). The Court agrees that, so long as *Locke* remains good law, Plaintiffs’ claims against the State Council Defendants, as administrators of the VTAG Program, must fail. The Court suspects that *Locke* also dooms Plaintiffs’ claims against the administrators of STAP. However, in light of the limited factual record before the Court—particularly with respect to the procedures utilized by the Department to administer the STAP program and execute its statutory mandate—the

Court will deny the Motion to Dismiss with respect to Plaintiffs' asserted claims against the Department Defendants. The Court will further deny the Motion for Preliminary Injunction, finding that Plaintiffs are unlikely to succeed on the merits of their claims against all Defendants.

A. Plaintiffs' Claims Against State Council Defendants, VTAG Administrators

Plaintiffs aver that their case is distinguishable from *Locke* because (1) Virginia's grant programs are not neutral or generally applicable; (2) Plaintiffs do not necessarily intend to prepare for a lifetime of ministry; and (3) the State's interest in not funding clergy is inapposite when Plaintiffs are not clergy and may never be. Pls.' Br. Opp'n Mot. Dismiss 1–2, ECF No. 26. Although the Court appreciates that religious freedom jurisprudence has evolved significantly in recent years, the Supreme Court continues to engage with, and has declined to overrule, *Locke*. See, e.g., *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 479–80 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464–65 (2017); *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 788–89 (2022). Despite Plaintiffs' arguments to the contrary, the Court reads *Locke* to remain good law that is on-point for at least the VTAG Program and thus binding authority compelling dismissal of all claims against the State Council Defendants.

A brief review of *Locke* is warranted. The plaintiff in *Locke*, Joshua Davey, challenged a Washington State scholarship program that provided tuition assistance for college students pursuing non-theological degrees. 540 U.S. at 716. The program's

governing statute did not further define what constituted “a degree in theology,” but the parties agreed that “the statute simply codifie[d] the State’s constitutional prohibition on providing funds to students to pursue degrees that are ‘devotional in nature and designed to induce religious faith.’” *Id.* Davey, who decided to pursue a double major in pastoral ministries and business management/administration, was unable to receive State scholarship funds because the pastoral ministries degree was considered “devotional” and therefore excluded under Washington’s program. *Id.* at 717. Noting a “historic and substantial state interest” in “not funding the pursuit of devotional degrees” out of concern for avoiding an establishment of religion, the Supreme Court found “nothing” about the Washington State law or scholarship program “suggest[ing] animus toward religion.” *Id.* at 713. Ultimately, the Court held in *Locke* that the State did not violate the Free Exercise Clause by “merely [having] chosen not to fund a distinct category of instruction” as part of “an otherwise inclusive aid program[.]” *Id.* at 713, 715. Washington’s law did “d[id] not require students to choose between their religious beliefs and receiving a government benefit.” *Id.* at 720–21. “If any room exists between the two Religion Clauses,” said the Court, “it must be here.” *Id.* at 725.

Plaintiffs’ attempts to distinguish their case against the State Council Defendants from *Locke* are unavailing. For one, the fact that Mr. Johnson and Mr. Thomas are considering ministry work among “various other secular careers” does not differentiate them from Davey. Pl.’s Br. Opp’n Mot. Dismiss 11.

Davey himself pursued a double major in pastoral ministries and business, and thus evidently had both secular and theological ambitions—much like Plaintiffs. *Locke*, 540 U.S. at 718. Although Davey may have been more sure about becoming a church pastor than Mr. Johnson or Mr. Thomas, *Locke* does not premise its holding on the degree of certainty individual students express when it comes to their future career path. Indeed, a State’s historical interest against funding the clergy logically remains constant, notwithstanding the evolving beliefs, ambitions, and intentions of students pursuing State funding for their secondary education. *See Locke*, 540 U.S. at 722–23.

Locke and the instant case are simply too analogous for the Court to meaningfully distinguish Plaintiffs’ claims challenging VTAG. Mr. Johnson and Mr. Thomas, like Davey, opted to pursue majors in a religious vocation. *See* Compl. ¶¶ 115–16 (Mr. Johnson “decided to major in Pastoral Leadership”), 144 (Mr. Thomas “intends to major in Music and Worship”); *Locke*, 540 U.S. at 712 (“Davey chose a double major in pastoral ministries and business management / administration.”). As a result of this choice, Mr. Thomas and Mr. Johnson, again like Davey, became ineligible for State tuition assistance. *See* Compl. ¶¶ 125, 151; *Locke*, 540 U.S. at 717. Mr. Thomas, Mr. Johnson, and Davey all have argued that the denial of funding based on their decision to pursue a theology degree violates the Free Exercise and Establishment Clauses of the First Amendment, as well as the Equal Protection Clause of the Fourteenth Amendment. *See generally* Compl.; *Locke*, 540 U.S. at 718. And both the Washington scholarship

program and VTAG allow tuition assistance for students attending religious *universities* or taking religious *courses*, so long as the State funding does not go toward religious training or devotional *majors*. *Locke*, 540 U.S. at 724–25, n.9; 8 Va. Admin. Code § 40-71-10 (allowing VTAG to be used for a “a declared double-major that includes an ineligible degree program” under certain conditions).

Although *Locke* drives the Court’s analysis as to the VTAG Program, the Court is also persuaded by *Hall v. Fleming*, in which this Court granted a motion to dismiss a complaint alleging a Free Exercise Clause Violation against the same Defendant Fleming as named herein. 2025 WL 2021022 (E.D. Va. May 9, 2025). In that case, Plaintiff Hall challenged Defendant Fleming’s application of the VTAG Program after her choice to pursue a major in a religious vocation rendered her ineligible for state tuition assistance. *Id.* at *1–2. This Court dismissed Hall’s claim, finding that Defendant Fleming’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” because her situation stood “directly analogous to Davey’s” in *Locke*, and “the Court stands bound to follow binding Supreme Court precedent that remains good law.” *See id.* at *3–4. *Hall* also addressed relatively recent doctrinal developments in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), and *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), finding that, in both cases, the Supreme Court did not overrule or abrogate *Locke* but rather reinforced the constitutionality of prohibitions on the use of state funds for religious

vocational education. *Hall*, 2025 WL 2021022, at *3–4. The Court sees no reason why *Hall*—both its reasoning and outcome—ought not to apply to Plaintiffs’ claims against Defendant Fleming and his co-administrator and co-Defendant, today.

The Court observes that Plaintiffs’ brief in opposition to Defendants’ Motion to Dismiss looks to relatively new cases in the Supreme Court’s religious freedom jurisprudence, suggesting that the legal landscape has sufficiently changed such that Plaintiffs’ claims are now viable despite *Locke* (and despite *Hall*). See Pl.’s Br. Opp’n Mot. Dismiss 1 (referencing the “*Carson*-line and *Fulton*-line of cases”). However, Plaintiffs’ attempts to apply new doctrine to familiar facts to prompt a different result is foreclosed by many of the same cases Plaintiffs cite. *Carson*, for example, addressed *Locke*, describing how its “reasoning expressly turned on what it identified as the ‘historic and substantial state interest’ against using ‘taxpayer funds to support church leaders.’” 596 U.S. at 788. The same reasoning applies here, since VTAG isolates as ineligible only CIP Code 39 programs, which are those that “prepare individuals for the professional practice of religious vocations.” Mem. Supp. Mot. Dismiss 5, ECF No. 20. VTAG does not limit tuition assistance to “nonsectarian” schools like the Maine program in *Carson*, to which the Supreme Court applied strict scrutiny. 596 U.S. at 768, 788.

As for *Fulton*, the Court cannot agree that the VTAG Program’s accommodation of situations wherein double-major students are unable to take more courses for their “eligible” major as compared to their “ineligible” major due to circumstances beyond

their control plausibly constitutes the type of “formal mechanism for granting exceptions [that] renders a policy not generally applicable.” 8 Va. Admin. Code § 40-71-10; *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021). The “particular reasons” for a student’s course selection are irrelevant to the administrative question of whether a school’s offered course schedule for a certain semester enables a student to equally earn credit toward both of her majors or not. See *Fulton*, 593 U.S. at 533. And, if anything, this purportedly “discretionary” aspect of the VTAG Program *lessens* the restrictions to which students pursuing religious training as one of multiple majors are subject, such that they are more free to use State funding to pursue religious training because of it. Cf. Pls.’ Br. Opp’n Mot. Dismiss 12–13.

The Court need not analyze every religious freedom case raised by Plaintiffs to conclude that *Locke* is good law that renders the VTAG Program constitutional. See *Malbon v. Penn. Millers Mut. Ins. Co.*, 636 F.2d 936, 939 n.8 (4th Cir. 1980) (explaining that it is not “absolutely necessary” that a court specifically recite and discuss each argument advanced by the parties). As recently as June of last year, the Supreme Court instructed that “the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable.” *Mahmoud v. Taylor*, 606 U.S. 522, 564 (citing *Emp. Div., Dept. of Human Res. of Ore. v. Smith*, 494 U.S. 872, 878–79 (1990)). The Supreme Court has also “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.”

Carson, 596 U.S. at 778 (citing *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Everson v. Bd. of Ed. of Ewing*, 330 U.S. 1, 16 (1947)). Here, as in *Locke*, “the State’s disfavor of religion (if it can be called that)” is mild—the exclusion of funding for religious instruction predominantly focused on ministerial work “places a relatively minor burden” on VTAG grantees. 540 U.S. at 724. Additionally, the VTAG Program “does not require students to choose between their religious beliefs and receiving a government benefit . . . [t]he State has merely chosen not to fund a distinct category of instruction.” *See id.* at 720–21. Unless and until *Locke* is overruled or abrogated by the United States Supreme Court, the VTAG Program passes constitutional muster. This Court is not free to adopt Plaintiff’s novel approach absent new, mandatory authority.

Plaintiffs’ combined claim against the State Council Defendants for “Violation of the Religion Clauses” strikes the Court as even less viable than Plaintiff’s first count alleging a pure Free Exercise claim. *See* Compl. ¶¶ 329–42. The “Religion Clauses” comprise the Free Exercise Clause and the Establishment Clause of the First Amendment and declare that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” *Locke*, 540 U.S. at 718; *Fulton*, 593 U.S. at 565 n.27 (Alito, J., concurring) (explaining applicability of the First Amendment to the States via the Fourteenth Amendment despite reference to “Congress”). In *Locke*, where the plaintiff argued that the denial of his scholarship violated the Free Exercise *and* Establishment Clauses of the First Amendment, the majority “[could] think of few areas

in which a State’s antiestablishment interests come more into play.” *Id.* at 718, 722. Since the Court finds the instant case against the State Council Defendants to be squarely within the scope of *Locke*, which contemplated the meaning and effect of both Religion Clauses in an analogous factual context, Plaintiffs’ hybrid Free Exercise and Establishment Clause Claim is foreclosed by that precedent as well.

Plaintiffs’ invocation of *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, where the State “imposed a denominational preference by differentiating between religions based on theological lines,” is inapposite. 605 U.S. 238, 241 (2025). An issue of the government “distinguish[ing] among religions based on theological differences,” *id.* at 254, is simply not before the Court in this case as presently alleged against Defendants Fleming and Jumper. Here, the State Council “maintain[s] ‘neutrality between religion and religion’” by applying the same state funding rules to any program that provides religious training or theological education—regardless of the specific faith pursued. *See id.* (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)); Va. Code Ann. § 23.1-631; 8 Va. Admin. Code § 40-71-10.

Plaintiffs’ reliance on *Tandon v. Newsome*, 593 U.S. 61 (2021), and *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), is also misplaced. In both of those cases, the Supreme Court emphasized that governmental discrimination against *all* religious beliefs runs afoul of the Religion Clauses. *See Lukumi*, 508 U.S. at 532 (“[W]e have often stated the principle that the First Amendment forbids an official purpose to disapprove of a

particular religion or of religion in general.” (collecting Establishment Clause cases)); *Tandon*, 593 U.S. at 62 (“[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” (citation omitted, emphasis in original)). Plaintiffs allege that when the State Council Defendants, as part of their administration of VTAG, decide that CIP Code 39 programs are “too religious” and thus ineligible compared to CIP Code 38 majors, they discriminate based on the pervasiveness or intensity of Plaintiffs’ religious beliefs. Pls.’ Br. Opp’n Mot. Dismiss 2, 20–21.

But this is not a plausible theory in light of the facts alleged by Plaintiffs, even when viewed in their favor. The CIP Code classifications and distinctions integrated into the VTAG eligibility system are neither based on programs’ religious or secular nature nor the religiosity of the student. Rather, it is clearly the pedagogical *purpose* of programs that renders CIP Code 38 programs—to teach students about religion—VTAG-eligible, while CIP Code 39 programs—to prepare students for “Lay Ministry”—are ineligible. *Compare* Compl. Ex. 2, *with* Compl Ex. 3. Virginia’s choice to provide funding for the former but not the latter as part of an otherwise inclusive program is not “constitutionally suspect” under *Locke*. *See* 540 U.S. at 725. Plaintiffs’ allegations of “forbidden governmental entanglement” fall flat when the State Council’s incorporation of the CIP Code system essentially eliminates the opportunity for Defendants Fleming and Jumper to excessively

scrutinize programs or VTAG applicants. *See* Compl. ¶¶ 329–342; Pls.’ Br. Opp’n Mot. Dismiss 20–22. Again, a CIP Code 38 program is VTAG-eligible, while a CIP Code 39 program is not, leaving little to no room for the State Council Defendants to entangle themselves (let alone entangle themselves excessively) in the religious beliefs and faith-based motivations of VTAG awardees.

Having determined that *Locke* governs Plaintiffs’ claims against the State Council Defendants as administrators of VTAG, the alleged Equal Protection Clause claim must fail as well. “Because we hold . . . that the [Washington scholarship program] is not a violation of the Free Exercise Clause,” explained the Court in *Locke*, “we apply rational-basis scrutiny to [Davey’s] equal protection claims.” 540 U.S. at 720 n.3; *see also Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). Here, VTAG’s statutory eligibility restriction to “educational programs other than those providing religious training or theological education,” easily passes such review as rationally related to Virginia’s legitimate and substantial anti establishment interests. *See* Va. Code Ann. § 23.1-631; *Locke*, 540 U.S. at 713, 720 n.3.

The dismissal of Plaintiffs’ claims against the State Council Defendants necessitates further dismissal of Plaintiffs Johnson and Thomas as parties to this case. The “constitutional minimum of standing” requires three elements: (1) a plaintiff must have suffered an “injury in fact”; (2) there must be a causal connection between the injury and the conduct complained of, meaning that the injury is fairly traceable to the challenged action of the defendants; and (3) it must be likely that the injury will be

redressed by a favorable judicial decision. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). At the pleading stage, “general factual allegations of injury resulting from the [defendant’s] conduct” suffice. *Id.* at 561. Because the Court will dismiss Plaintiffs’ claims against Defendants Fleming and Jumper, there will be no causal connection between the injuries allegedly suffered by Plaintiffs Johnson and Thomas and the alleged conduct of the remaining Defendants. Mr. Johnson and Mr. Thomas, who do not allege having ever applied for a National Guard STAP grant, cannot properly proceed in a suit challenging only that program. In other words, any injury to Mr. Johnson or Mr. Thomas cannot fairly “be traced to the challenged action” of Virginia Department of Military Affairs officials. *See Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41 (1976). This causation problem is exacerbated by the fact that any final decision regarding the National Guard STAP and the Department Defendants’ administration thereof will not redress Mr. Johnson’s nor Mr. Thomas’s alleged injuries from having been denied (or anticipating future denial) of VTAG awards. Finding Plaintiffs Johnson and Thomas unable to meet the tripartite standing requirement within the modified party parameters of the instant matter, the Court will dismiss them from the action.

B. Plaintiffs’ Claims Against Department Officials, National Guard STAP Administrators

Plaintiffs allege the same three claims discussed above against the Department officials that administer STAP. The Court is not prepared today to dismiss alleged constitutional violations under the Religion Clauses and Equal Protection provision of

the federal Constitution based on a factual record that is underdeveloped with respect to the Virginia National Guard STAP and its administration. As required at this early stage of litigation, the Court remains open to the possibility that some fact—yet to be discovered—will sufficiently distinguish STAP (and the Department’s administration thereof) from the Washington State scholarship program examined in *Locke*.

For example, in *Locke*, “[t]he [postsecondary] institution, rather than the State, determine[d] whether a student’s major [was] devotional.” 540 U.S. at 717. The facts presently before the Court describing STAP and its administration can be read to plausibly suggest that State officials and their staff—not schools—decide which programs are “for religious training or theological education” and thereby excluded from STAP grant eligibility.³ See Compl. ¶¶ 166–77. If later proven by Plaintiffs, such a factual departure from *Locke* could theoretically distinguish STAP and the Department’s administration of that program from the Washington scholarship program previously scrutinized by the Supreme Court and the VTAG program reviewed by this Court both herein and in *Hall*. See generally 2025 WL 2021022.

³ The same cannot be said of the VTAG Program, which, by incorporating the CIP-code classification system, adopts the *school’s* descriptions of the nature of its own programs. See Compl. ¶¶ 72, 77; Mem. Supp. Mot. Dismiss 5; Defs.’ Reply Supp. Mot. Dismiss 14, ECF No. 28 (“the *university* . . . assigns the [Bachelor of Science in Religion] major CIP Code 38.0201” (emphasis added)).

The Court is assured, even now, that Plaintiffs cannot plead around *Locke* when it comes to the State Council’s administration of VTAG with respect to Mr. Johnson and Mr. Thomas. But, given the more limited factual depiction of STAP presently available, the Court is not properly positioned to dismiss Plaintiffs’ claims against Defendants Ring and Unmussig absent additional information. Mindful of *Locke* as mandatory authority but unable to presently determine whether *Locke*’s scope encompasses STAP as administered by the Department Defendants in this case, the Court will permit Counts I through III as alleged against Defendants Ring and Unmussig to proceed.⁴

⁴ Defendants raise a *Pullman* abstention point in a footnote of their Memorandum in Support of their Motion: “If Stevens were asserting that the [Department] incorrectly applied Virginia law, the Court would lack jurisdiction to adjudicate such a claim.” See Mem. Supp. Mot. Dismiss 10 n.3 (cleaned up) (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106, 124–25 (1984)). The Court responds in kind. This is a suit challenging the constitutionality of the actions of state officials, which can be properly considered by a federal court pursuant to the Supreme Court’s holding in *Ex parte Young* because it is not a civil action against the State itself. 209 U.S. 123 (1908). If Defendants intend to suggest that this Court should abstain under *Pullman* because Plaintiffs’ case “involves an open question of state law that is potentially dispositive inasmuch as its resolution may moot the federal constitutional issue,” then the Court invites Defendants to initiate further briefing on that specific issue. See *W. Va. Citizens Def. League, Inc. v. City of Martinsburg*, 483 F. App’x 838, 839–40 (4th Cir. 2012) (cleaned up).

IV. MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs have moved the Court for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65. Pls.' Mot. Prelim. Inj. 1, ECF No. 22. "A preliminary injunction is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (citation omitted). "A plaintiff seeking a preliminary injunction must demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Id.* (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). All four requirements must be satisfied. *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346 (4th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

Here, Plaintiffs' Motion for Preliminary Injunction is moot, at least in part. Plaintiffs ask that the Court prohibit Defendants from denying Plaintiffs tuition assistance grants for the summer 2025, fall 2025, and spring 2026 semesters. Pls.' Mot. Prelim. Inj. 1. Of course, by no fault of Plaintiffs, the summer and fall semesters of 2025 have passed and the spring 2026 semester is well underway. Further, after the Court's ruling on the Motion to Dismiss, only Mr. Stevens will remain as a Plaintiff with an actionable claim and only Defendants Ring and Unmussig will remain defending parties in this case. So, all that remains of the Motion for Preliminary Injunction for the Court's consideration is the request to enjoin the

Department Defendants from denying Mr. Stevens a National Guard STAP grant while he pursues a Master of Divinity Program at Liberty University as well as the request for reimbursement to Mr. Stevens in the amount of \$2,009.99, which “he otherwise would [have] receiv[ed] but for the National Guard’s religious exclusion.” *Id.* at 1–2; *see Univ. of Tex. v. Camenisch*, 451 U.S. 390, 394 (1981) (“This, then, is simply another instance in which one issue in a case has become moot, but the case as a whole remains alive” (citation omitted)).

Plaintiffs’ surviving preliminary injunction requests on behalf of Mr. Stevens will be denied. For the reasons described above, *see supra* Part III, Plaintiffs have not established that they are likely to succeed on the merits of a Free Exercise Clause, Establishment Clause, or Equal Protection Clause Claim against the Defendants. Specifically, Mr. Stevens has not “demonstrate[d] by ‘a clear showing’ that . . . [he] is likely to succeed on the merits at trial” because mandatory authority embodied by *Locke* stands directly in his way, notwithstanding the fact that his claims survive the 12(b)(6) stage. *See Real Truth*, 575 F.3d at 345. As previously explained, Plaintiffs are entitled to further development of the factual record with respect to the Department’s administration of the Virginia National Guard STAP, both broadly and as applied to Mr. Stevens specifically. The current legal landscape governing these claims, however, renders them unlikely to succeed, and the first of the four *Winter* factors is therefore fatal to any effort by Plaintiffs to secure preliminary relief. *See Winter*, 555 U.S. at 20; *Real*

Truth, 575 F.3d at 346 (failure of one *Winter* factor is fatal to obtaining preliminary injunctive relief).

V. CONCLUSION

For the reasons detailed above, Defendant's Motion to Dismiss will be granted in part and denied in part. Plaintiffs' three counts as alleged against Defendants Fleming and Jumper will be dismissed. The same three counts as alleged against Defendants Ring and Unmussig by Mr. Stevens will survive. Plaintiffs Johnson and Thomas will be dismissed for lack of standing with regard to the surviving claims. Finally, finding all surviving claims unlikely to succeed on the merits in light of the Supreme Court's holding in *Locke*, the Court will deny Plaintiffs' Request for Preliminary Injunction.

An appropriate Order shall issue.

/s/ Roderick C. Young
Roderick C. Young
United States District Judge

Date: March 31, 2026
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CAMERON JOHNSON,	)	Civil Action No.
<i>et al.</i> ,	)	3:25CV407 (RCY)
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
A. SCOTT FLEMING, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on Defendants' joint Motion to Dismiss (ECF No. 19) and Plaintiffs' joint Motion for Preliminary Injunction (ECF No. 22). For the reasons stated in the accompanying Memorandum Opinion, the Motion to Dismiss (ECF No. 19) is GRANTED with respect to Plaintiffs' claims as alleged against Defendants Fleming and Jumper and DENIED with respect to Plaintiff Stevens's claims as alleged against Defendants Ring and Unmussig. Additionally, Plaintiffs' Motion for Preliminary Injunction (ECF No. 22) is hereby DENIED.

Defendants Ring and Unmussig SHALL file and serve their responsive pleading(s) within 14 days of this Order pursuant to Federal Rule of Civil Procedure 12(a)(4)(A). The Clerk is DIRECTED to terminate Defendants Fleming and Jumper as well as Plaintiffs Johnson and Thomas. The remaining

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parties are DIRECTED to contact the Courtroom Deputy of the undersigned within SEVEN (7) days of the entry of this Order to schedule an Initial Pretrial Conference.

Let the Clerk file the Memorandum Opinion and this Order electronically and notify all parties accordingly.

It is so ORDERED.

/s/ Roderick C. Young
Roderick C. Young
United States District Judge

Date: March 31, 2026
Richmond, Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CAMERON JOHNSON,	)	
<i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civil Action No.
	)	3:25CV407 (RCY)
v.	)	
A. SCOTT FLEMING, <i>et</i>	)	
<i>al.</i> ,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

This matter is before the Court on Plaintiffs' Consent Motion to Stay Proceedings Pending Resolution of Plaintiffs' Appeal ("Motion to Stay," ECF No. 36) and Plaintiffs' Motion for Injunction Pending Appeal (ECF No. 37). The Court will first address the Motion for Injunction Pending Appeal.

In their Motion for Injunction Pending Appeal, Plaintiffs seek court orders prohibiting Defendants Fleming and Jumper from denying Virginia Tuition Assistance Grant awards to Plaintiffs Johnson and Thomas because of their majors (Pastoral Leadership and Music and Worship, respectively) while their appeal of this Court's rulings on Plaintiffs' Motion for Preliminary Injunction and Defendants' Motion to Dismiss remains pending.¹ Mot. Inj. Pending Appeal

¹ The Court has dismissed Plaintiffs Johnson and Thomas as well as Defendants Fleming and Jumper from this action

1–2. Similarly, Plaintiffs request that the Court order Defendants Ring and Unmussig to allow Plaintiff Stevens to receive National Guard Grants for all future semesters while Plaintiffs’ appeal remains pending and prohibit the Virginia Department of Military Affairs from denying such grants to Plaintiff Stevens because he is in a Master of Divinity program. *Id.* at 2. The relief Plaintiffs request in this Motion mirrors the relief sought in their Motion for Preliminary Injunction, which the Court denied via Memorandum Opinion and Order on March 31, 2026. *See* ECF Nos. 22; 31–32. The only factual difference between the instant Motion for Injunction Pending Appeal and the originally filed Motion for Preliminary Injunction is that time has elapsed such that Plaintiffs are anticipating beginning new semesters of their schooling. Mot. Inj. Pending Appeal 2. Plaintiffs have not identified any meaningful changes in the applicable legal landscape in the last three weeks and acknowledge that the standard for an injunction pending appeal is the same as the familiar preliminary injunction standard just recently applied. Br. Supp. Mot. Inj. Pending Appeal 3; *Doe by Doe v. S. Carolina*, 2025 WL 2375386, at *8 (4th Cir. Aug. 15, 2025) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Because their Motion for Injunction Pending Appeal essentially invites the Court to reconsider its recent ruling in the absence of materially different factual circumstances or new law, that Motion (ECF No. 37) is DENIED.

following dismissal of the claims implicating these parties. Mem. Op. 20, ECF No. 31; Order, ECF No. 32.

Separately, in their Motion to Stay, Plaintiffs request a stay of all district court deadlines and proceedings in light of the Court's recently issued Order and accompanying Memorandum Opinion, which Plaintiffs promptly appealed. Mot. to Stay 1–2. Defendants Ring and Unmussig consent to a stay of district court proceedings pending appeal. *Id.* at 2.

“It is well established that a district court has broad discretion to control the disposition of cases on its docket . . . [and t]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket[.]” *Hickey v. Baxter*, No. 87–2028, 1987 WL 39020, at *1 (4th Cir. Nov. 19, 1987). In deciding whether to grant a motion to stay, “courts consider three factors: (1) judicial economy, (2) hardship and equity to the moving party if the action is not stayed, and (3) potential prejudice to the non-moving party.” *Brown v. Energy Servs. Grp. Int’l, Inc.*, 2022 WL 2161034, at *4 (E.D. Va. June 14, 2022) (citations omitted). Here, both the second and third factors favor a stay of relevant proceedings given that Defendants consent to Plaintiffs’ request. With respect to the first factor, awaiting confirmation and/or guidance from the Fourth Circuit before expending additional time and resources adjudicating the merits of this case benefits all involved, the Court included. Accordingly, Plaintiffs’ Motion to Stay (ECF No. 36) is hereby GRANTED until resolution of Plaintiffs’ interlocutory appeal.

The Clerk is DIRECTED to send a copy of this Order to all counsel of record.

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It is so ORDERED.

/s/ Roderick C. Young

Roderick C. Young

United States District Judge

Date: April 21, 2026

Richmond, Virginia

34a

FILED: May 18, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 26-1437
(3:25-cv-00407-RCY)

CAMERON JOHNSON; LUKE THOMAS; TRACE
STEVENS

Plaintiffs - Appellants

v.

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

Defendants - Appellees

O R D E R

Upon consideration of submissions relative to
appellants' motion for an injunction pending appeal,
the court denies the motion.

35a

Entered at the direction of Judge Thacker with
the concurrence of Chief Judge Diaz and Judge
Harris.

For the Court

/s/ Nwamaka Anowi, Clerk

U.S. Const. amend. I

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

U.S. Const. art. VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Va. Const. art. IV, § 16

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.

Va. Const. art. VIII, § 10

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city or town; second, that the

General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several States joining in such agreement; third, that counties, cities, towns, and districts may make appropriations to nonsectarian schools of manual, industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.

Va. Const. art. VIII, § 11

The General Assembly may provide for loans to, and grants to or on behalf of, students attending nonprofit institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education. The General Assembly may also provide for a State agency or authority to assist in borrowing money for construction of educational facilities at such institutions, provided that the Commonwealth shall not be liable for any debt created by such borrowing. The General Assembly may also provide for the Commonwealth or any political subdivision thereof to contract with such institutions for the provision of educational or other related services.

Va. Code § 23.1-610**Virginia National Guard State Tuition
Assistance Program; grants**

A. Subject to regulations as prescribed by the Adjutant General, any individual who (i) is a member of the Virginia National Guard and has a minimum remaining obligation of two years, (ii) has satisfactorily completed required initial active duty service, (iii) is satisfactorily performing duty in accordance with regulations of the National Guard, and (iv) is enrolled in and in good standing at any public institution of higher education or accredited nonprofit private institution of higher education whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education is eligible for a grant in the amount of the difference between the full cost of tuition and any other educational benefits for which he is eligible as a member of the National Guard. Grants provided under this section shall be subject to limitation based on the amount of funds appropriated for such purpose. If applications for grants exceed the amount of funding appropriated, the Department of Military Affairs (the Department) shall issue grants to eligible recipients based on the order in which applications were received.

B. Application for a grant shall be made to the Department no later than 30 days prior to the beginning of an academic semester. The Department shall determine whether an applicant is eligible for the grant as described in subsection A and communicate acceptance and any additional requirements determined by the Department in

writing no later than 30 days after receipt of an application. Upon acceptance, grant funds shall be disbursed to the applicable institution of higher education for credit against the recipient's student account.

C. Any member of the Virginia National Guard shall be eligible to receive a grant under this section if such member has two years remaining on his service obligation to the Virginia National Guard as of the last day of the last term or semester for which tuition assistance is requested. Service in the inactive National Guard, the active duty or reserve forces of the United States, or the National Guard of any other state shall not count as applicable service toward fulfilling this service obligation. Federal active duty mobilizations occurring while still a member of the Virginia National Guard and state active duty for the Commonwealth shall count toward the two-year service obligation.

D. The Department may utilize grant funding in order to recruit qualified applicants for service in the Virginia National Guard. The yearly funding amount for such recruitment shall be at the discretion of the Adjutant General and the Department and not exceed \$50,000 per fiscal year.

Va. Code § 23.1-628

Tuition Assistance Grant Program

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.

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 § 23.1-629

Council designated as administering agency

The Council is designated as the administering agency for the Program and may adopt regulations consistent with this article and appropriate to the administration of the Program. The Council may define by regulation such terms used in this article as “full-time,” “undergraduate,” “graduate,” “professional,” and “financial aid.”

Va. Code § 23.1-631

Eligibility; duration

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.

Va. Code § 23.1-632**Eligibility; Selective Service registration**

Individuals who have failed to meet the federal requirement to register for the Selective Service are not eligible to receive grants. However, an individual who has failed to register for the Selective Service shall not be denied a right, privilege, or benefit under this section if (i) the requirement to so register has terminated or become inapplicable to the individual and (ii) the individual shows by a preponderance of the evidence that the failure to register was not a knowing and willful failure to register. The Council shall be assisted in enforcing this provision by the eligible institutions whose students benefit from the Program.

8 Va. Admin. Code § 40-71-10**Definitions**

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.

“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;
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.

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.

"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.

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.

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“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.

“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

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.

8 Va. Admin. Code § 40-71-30**Disbursement of funds**

A. Advancement of funds. A percentage of an institution's estimated allocation of funds for a term will be forwarded to the institution at the beginning of the term. The allocation will be based primarily on the projected award for the term and each institution's prior academic year's enrollment unless the institution makes a convincing case by presenting new enrollment factors.

After the census date for each term, the institution will certify that recipients are enrolled as full-time students and are meeting other eligibility requirements established for the program. After enrollment is verified, additional funds, if needed, may be disbursed to the institution. Funds for recipients reported as not enrolled full time or not meeting other eligibility requirements shall not be disbursed to students, and funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be returned to the council no later than the end of the fiscal year unless otherwise requested, in which case the deadline is within 30 days of the request.

B. Notification to students. The private institutions that participate in this program shall, during the spring semester previous to the commencement of a new academic year or as soon as a student is admitted for that academic year, whichever is later, notify their enrolled and newly admitted Virginia students about the availability of tuition assistance awards under the program. The information provided to students and their parents

must include information about the eligibility requirements, the application procedures, and the fact that the amount of the award is an estimate and is not guaranteed. The number of students applying for participation and the funds appropriated for the program determine the amount of the award. Conditions for reduction of award amount and award eligibility are described in these regulations. The institutions shall certify to the council that such notification has been completed and shall indicate the method by which it was carried out.

Further, the institutions shall make students aware that the award is state funded. Evidence of such notification may include award letters or other formal procedures used by the institution for student notification of financial aid awards.

C. Restriction on use of funds. An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest-bearing account established and maintained exclusively for that purpose. Funds shall be disbursed only to student accounts receivable or returned to the council. The institution shall not hold program funds in the account for more than 20 working days before transferring funds to student accounts.

Funds received by the institutions under the program shall be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the

intended student beneficiaries and shall not be used for any other purpose.

8 Va. Admin. Code § 40-71-40

Student eligibility

A. Receipt of application.

1. Applications submitted in person, by facsimile, or by other electronic means, or postmarked by carrier mail by the applicable deadline (July 31, September 14, and December 1) of the academic year may be deemed as meeting the deadline.

2. If the deadline occurs on a weekend or nonbusiness day as recognized by the institution or carrier, the application will be deemed as meeting the respective deadline if the application is received by the institution by the first business day following the deadline or postmarked by carrier mail by the carrier's first business day following the deadline.

3. Students who submit an application to one institution but enroll into another may still be considered to have met the respective deadline if the initial institution can verify receipt of the application by the deadline.

B. Priority for award. Because funds may not be sufficient to award all eligible students, students are prioritized based on prior eligibility (returning students) and date of application (new students). Below are descriptions of the students in priority order for receiving an award. Priority students will receive a full award before students in a subsequent priority order.

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1. Category 1 and 2 students receive priority for an award.

a. Category 1 students: returning students who received an award in the previous fiscal year, including:

(1) Students returning to their original institution;

(2) Students transferring from another participating eligible institution; and

(3) Students moving from one degree level to another within an institution or from another participating eligible institution.

b. Category 2 students: students submitting a completed program application by July 31 of the fiscal year who were:

(1) New and readmitted students who were not enrolled in the previous fiscal year; or

(2) Returning students who met the domicile requirements in the previous fiscal year but did not receive an award due to insufficient funding (Category 3 and 4 students) or because they were not enrolled full time or otherwise did not meet other award criteria.

2. Category 3 students will be considered for an award if funds are available after Category 1 and 2 students are fully funded. Category 3 students are those who submit a completed application after July 31 but no later than September 14, including:

a. New and readmitted students who were not enrolled in the previous fiscal year; or

b. Students enrolled but who did not apply for an award in the previous fiscal year.

3. Category 4 students will be considered for an award if funds are available after Category 1, 2, and 3 students are fully funded.

a. Category 4 students are those who submit a completed program application after September 14 but no later than December 1 of the fiscal year and include new and readmitted students who were not enrolled in the previous fiscal year.

b. Category 4 students receive spring term only awards.

4. Exceptions are made for students who break enrollment for military purposes. Students reentering their degree program within one year of completion of military responsibilities shall be granted priority, along with Category 1 students. This exception is for priority purposes only as the student still must meet all eligibility criteria.

C. Eligibility criteria. In order to be eligible to receive an award, the student must:

1. Be a domiciliary resident of Virginia, as defined by § 23.1-502 of the Code of Virginia, for at least one year prior to the date of entitlement (first day of classes for the program in which the student is enrolled) or eligible under § 23.1-505 of the Code of Virginia.

2. Enroll in the academic year for which the award is to be received as a full-time student in an eligible program at a participating eligible institution.

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a. A student's enrollment status shall be determined at the census date. If a student falls below full time by dropping or withdrawing from individual courses or withdraws from the institution after the census date, he shall receive a prorated award based on the tuition refund policy in effect at the institution.

b. A graduating student enrolled less than full time for a term in his final academic year may be eligible to receive an award if:

(1) The student was enrolled full time and accepted for or received an award in the immediate preceding academic year;

(2) The course credits available in the current term needed to complete degree requirements total less than a full-time course load; and

(3) The maximum number of years of eligibility has not been exceeded.

c. Exceptions to the full-time requirement due to a documented disability or other medical reasons, as applicable under the federal American's with Disabilities Act, will be considered on a case-by-case basis.

3. Have complied with federal selective service registration requirements unless the following apply:

a. The requirement to register has terminated or become inapplicable to the person; and

b. The person shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

4. Complete and submit an application for an award by the published deadline.

5. Not participate in the Virginia Women's Institute for Leadership at Mary Baldwin College.

D. Limitations on awards. For administrative purposes, each academic year shall be comprised of six units of program eligibility; accordingly, a semester is equivalent to three units and a quarter is equivalent to two units.

1. If a student receives a partial payment for a semester or quarter, the student's total eligibility shall be reduced by one semester (three units) or quarter (two units).

2. Undergraduate students:

a. Students pursuing an associate's degree shall be limited to a maximum of two academic years (12 units), or its equivalent, of support.

b. Students pursuing degrees at the undergraduate level shall be limited to a combined life-time maximum of four academic years (24 units), or its equivalent, of support, inclusive of enrollment in any combination of associate's or baccalaureate degrees.

c. Students enrolled in teacher certification programs at the undergraduate level may receive awards if the student is enrolled full time and has not exhausted eligibility.

3. Post-undergraduate students:

a. Students pursuing degrees at the graduate level shall be limited to a combined life-time maximum of three academic years (18 units), or its equivalent, of support.

b. Students pursuing degrees at the first-professional level shall be limited to a life-time maximum of three academic years (18 units), or its equivalent, of support, except for students pursuing medical or pharmacy degrees who are limited to four academic years (24 units), or its equivalent, of support.

c. In no case should any combination of post-undergraduate programs exceed four years of support.

4. A student enrolled at multiple institutions may receive an award if:

- a. The home institution is an eligible institution;
- b. A formal consortium agreement is in place; and
- c. The student's combined enrollment is full time.

If the consortium agreement includes a Virginia public institution, the award will be prorated based on the courses for the term not attempted at the Virginia public institution as a percentage of minimum full-time enrollment.

5. A student may receive an award under a study abroad program if:

- a. The student is enrolled full time;
- b. The student remains on record as an enrolled student in an otherwise eligible program at a participating eligible institution for the term in which the award is received;
- c. The program funds are disbursed to the participating eligible institution; and

d. The overseas program is a formal agreement arranged by the participating eligible institution.

E. Appeals process.

1. The participating institution makes the student's initial eligibility determination. If the institution determines that the student does not meet the domicile requirements, the institution must notify the student in writing of the outcome and the availability of the appeals process.

2. Council shall make final decisions on domicile eligibility disputes between students and the enrolling institutions. The appeal process for resolving eligibility disputes shall consist of a review of the institution's initial determination by a council staff member. Further student appeals are subject to a final review by a committee comprised of three council staff members. No person who serves at one level of the appeals process shall be eligible to serve at any other level of review. Timing for completion of the review is heavily dependent upon the response time to staff information requests for both the student and the institution, but typically council staff will respond within two weeks.

3. Student appeals must be filed in writing with the council within 30 days of the institution's written notification. If the outcome of the appeal upholds the institution's initial determination, the student may file a final appeal within 30 days of the council's written notification.

4. The appeals process is contained in this subsection and available to the institutions and students online or in print upon request.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**
Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher Education
for Virginia; **John Jumper**, in
his official capacity as the Chair
of the State Council of Higher
Education for Virginia; **Major
General James W. Ring**, in his
official capacity as The Adjutant
General of Virginia; and **Donald
L. Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

Case No.
3:25-cv-00407

**Verified
Complaint**

INTRODUCTION

1. This civil-rights action seeks to end Defendants' state-wide religious discrimination against college students who choose certain religious majors.

2. Defendants administer two generally available public grant programs that help Virginians pay

for college. But Defendants exclude students who choose programs that Defendants deem to be for “religious training or theological education.”

3. The State Council of Higher Education for Virginia (“State Council”) administers the Virginia Tuition Assistance Grant Program (sometimes called “VTAG”). The Tuition Assistance Grant is generally available to any student domiciled in Virginia attending private, non-profit colleges, and students may receive it regardless of need or other financial aid.

4. Plaintiff Cameron Johnson just graduated high school and will be attending Liberty University starting in the fall 2025 semester. He is majoring in Pastoral Leadership.

5. Cameron applied for—and was denied—a Tuition Assistance Grant because the State Council categorically excludes students from eligibility if they pursue certain religious programs like Pastoral Leadership.

6. Cameron is otherwise qualified to receive a Tuition Assistance Grant, and but for the State Council’s religious exclusion, he would receive \$2,500 each semester during his undergraduate career.

7. Plaintiff Luke Thomas also recently graduated high school and will be attending Liberty University starting in the fall 2025 semester. He will major in Music and Worship.

8. Luke cannot receive a Tuition Assistance Grant to pursue a Music and Worship degree, however, because the State Council excludes that program from eligibility.

9. Luke is currently an “undeclared” major but he will declare his major no later than October 20, 2025, so that he can enroll in the required courses that he must take in the Music and Worship program for the spring 2026 semester.

10. Because of the State Council’s religious exclusion, Luke will be denied a Tuition Assistance Grant for the spring 2026 semester and subsequent semesters because the State Council deems the Music and Worship program as one for “religious training or theological education.”

11. Luke is otherwise qualified to receive a Tuition Assistance Grant, and but for the State Council’s religious exclusion, Luke would receive \$2,500 for the spring 2026 semester and subsequent semesters.

12. The State’s discrimination against students who choose certain religious programs doesn’t end there.

13. The Virginia Department of Military Affairs (“the Department”) administers a similar National Guard Tuition Assistance Grant Program (the “National Guard Grant”) for National Guard servicemembers. This Program is generally available to members of the Virginia National Guard, who can receive grants to cover their remaining tuition cost after receipt of other educational benefits. Servicemember-students can receive up to \$20,000 per year.

14. Plaintiff Private First Class Trace Stevens is a member of the Virginia Army National Guard and

is currently attending Liberty University. He is majoring in Religion (General Track).

15. Trace applied for—and was denied—a National Guard Grant because the Department arbitrarily decided his program was for “religious training or theological education” and thus ineligible.

16. To make matters worse, Trace joined the National Guard mainly because a recruiter told him that he would be able to use the National Guard Grant to help him pay for a religiously-oriented college degree.

17. What’s more, the federal government has no issue with Trace’s chosen program—Trace is currently receiving federal tuition assistance from the United States Army.

18. Trace is otherwise qualified to receive a National Guard Grant, and but for the Department’s religious exclusion, Trace would receive more than \$2,000 in a reimbursement grant for the spring 2025 semester, a \$3,000 reimbursement grant for the summer 2025 semester, and grants for future semesters.

19. And although the language in both grant statutes excludes *colleges* that have a “primary purpose” of providing “religious training or theological education,” Defendants exclude Cameron, Luke, and Trace from these public grants because they deem their chosen *programs* as too religious, not because the college is too religious.

20. In fact, the National Guard Grant statute, Va. Code § 23.1-610, doesn’t even require the Department to look at the nature of Trace’s program (only the

institution), yet Department officials scrutinize an applicant's chosen program.

21. The Supreme Court recently held—three times in the last eight years—that the government “violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits,” including by excluding them based “on their anticipated religious use of the benefits.” *Carson v. Makin*, 596 U.S. 767, 778, 789 (2022); *see also Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020).

22. But that is exactly what Defendants’ religious exclusions do.

23. Cameron, Luke, and Trace would receive these public grants if they majored in any number of secular or other “approved” religious programs.

24. For instance, they would receive the grants if they chose majors like Philosophy or Mathematics at Liberty University or another college.

25. Luke could get a grant if he majored in other music programs where he would take similar music-related classes to the ones he will take for his Music and Worship major.

26. Cameron, Luke, and Trace would even get the grants if they chose certain “approved” religious programs that Defendants do not deem to be for “religious training or theological education”—all at government officials’ individualized discretion.

27. For example, Cameron, Luke, and Trace would get the grants if they studied religion at a

secular school, like the University of Richmond or Washington and Lee University, because Defendants' do not consider those programs as for "religious training or theological education."

28. Worse still, Trace's chosen major is *approved* for VTAG, yet the Department still unilaterally decided to exclude it from the National Guard Grant, without any explanation as to why.

29. The sole reason Cameron and Trace are currently excluded from Virginia's college public grants (and the sole reason Luke will be excluded) is because Defendants deem their degree programs to be for "religious training or theological education" and are therefore, in Defendants' discretion, too religious.

30. This is so even though Cameron, Luke, and Trace do not yet know what career they will have, and they are interested in various future careers.

31. Defendants' religious exclusions discriminate against religion and amongst religion.

32. Defendants' religious exclusions are causing Cameron, Luke, and Trace—and other students like them—ongoing irreparable harm every day because the exclusions continuously violate their constitutional rights.

33. Declaratory and injunctive relief is needed to end this ongoing religious discrimination and to allow Cameron, Luke, and Trace to receive grants that they are otherwise qualified for and that were promised to them.

JURISDICTION AND VENUE

34. This case raises federal questions under the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

35. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

36. This Court can grant the requested declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 and 65.

37. This Court can award costs and attorneys' fees under 42 U.S.C. § 1988(b).

38. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) and Local Civil Rule 3(C).

PARTIES

39. Plaintiff Cameron Johnson is an 18-year-old who resides in Waynesboro, Virginia. Cameron has been a life-long resident of Virginia.

40. Plaintiff Luke Thomas is an 18-year-old who resides in Moseley, Virginia. Luke has been a life-long resident of Virginia.

41. Plaintiff Trace Stevens is a 20-year-old who resides in Williamsburg, Virginia. Trace has lived in Virginia since he was in 7th grade.

42. Defendant A. Scott Fleming is the director and chief executive officer of the State Council of Higher Education for Virginia. Va. Code § 23.1-202.

43. Defendant Fleming is sued in his official capacity.

44. Defendant John Jumper is the Chair of the State Council of Higher Education for Virginia. Va. Code § 23.1-200.

45. Defendant Jumper is sued in his official capacity.

46. The State Council of Higher Education for Virginia—including through Defendants Fleming and Jumper—administers the Virginia Tuition Assistance Grant Program and enforces the laws and regulations under the Virginia Tuition Assistance Grant Act. Va. Code § 23.1-629.

47. Defendant Major General James W. Ring is the Adjutant General of Virginia. As Adjutant General, Defendant Ring is the head of the Virginia Department of Military Affairs. Va. Code § 44-13; *id.* § 44-11.

48. Defendant Ring is sued in his official capacity.

49. Defendant Donald L. Unmussig is the Chief Financial Officer of the Virginia Department of Military Affairs.

50. Defendant Unmussig is sued in his official capacity.

51. The Virginia Department of Military Affairs—including through Defendants Ring and Unmussig—administers the Virginia National Guard Grant Program and enforces the laws under the Program.

52. During all events detailed in this Complaint, Defendants Fleming, Jumper, Ring, and Unmussig acted, and continue to act, under color of state law.

53. Defendants Fleming and Jumper were and are responsible for the application and denial of the Tuition Assistance Grant to Cameron and Luke.

54. Defendants Ring and Unmussig were and are responsible for the application and denial of the National Guard Grant to Trace.

FACTUAL ALLEGATIONS

A. The State Council Denies Cameron and Luke Tuition Assistance Grants

1. The Tuition Assistance Grant Program and Its Religious Exclusion

55. The Virginia Tuition Assistance Grant Program provides non-need-based grants to Virginia residents who attend private, non-profit colleges or universities. *See generally* Va. Code § 23.1-628 *et seq.*

56. 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.” Va. Code § 23.1-631(A).

57. The State Council determines the amount of the Tuition Assistance Grant annually, based on the number of eligible students and available funds. 8 V.A.C. § 40-71-50.

58. The Tuition Assistance Grant award amount for 2025–2026 for a non-distance undergraduate student is \$5,250. *See* VTAG Webpage at 3, a true and correct copy of which is attached as **Exhibit 1**; also available at *Virginia Tuition Assistance Grant Program*, STATE COUNCIL OF HIGHER EDUC. FOR

VIRGINIA, <https://bit.ly/4iSYPyR> (last visited May 22, 2025).

59. At the beginning of each semester, the State Council disburses awarded grant funds directly to each college to be applied to eligible students' accounts. 8 V.A.C. § 40-71-30.

60. To receive a Tuition Assistance Grant, students must meet certain eligibility criteria. 8 V.A.C. § 40-71-40(C).

61. A student must be a “domiciliary resident of Virginia” for at least one year prior to the first day of classes (or meet the domicile exception for dependents of active-duty military personnel), register with the Selective Service, submit a Tuition Assistance Grant application by the deadline, and not participate in the Virginia Women’s Institute for Leadership at Mary Baldwin College. 8 V.A.C. § 40-71-40(C)(1), (3), (4), (5).

62. Students must also be enrolled full-time in an “eligible program” at an “eligible institution.” 8 V.A.C. § 40-71-40(C)(2).

63. An “eligible institution” is “a nonprofit private institution of higher education whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.” Va. Code § 23.1-628(A); *see also* 8 V.A.C. § 40-71-10.¹

¹ Both the Tuition Assistance Grant Act, Va. Code § 23.1-628, and the National Guard Grant statute, *id.* § 23.1-610, exclude colleges or universities that have a “primary purpose” to “provide religious training or theological education.” This “primary purpose” language mirrors Article VIII, Section 11 of the

64. The State Council has decided that many religious schools do not have a primary purpose of religious training or theological education. This includes Liberty University.

65. So Liberty University is an eligible institution in the Tuition Assistance Grant Program. *See* VTAG Webpage at 2 (Exhibit 1).

66. Generally, an “eligible program” is an undergraduate program that leads to an associate’s or baccalaureate degree, a graduate program in a health-related professional program, or a first-professional program in a health-related profession. 8 V.A.C. § 40-71-10.

67. But educational programs that “provid[e] religious training or theological education” are excluded from eligibility. Va. Code § 23.1-631(C).

68. The State Council has determined, by regulation, that educational programs “that provide religious training or theological education” are those that are “classified as CIP Code 39-series programs.” 8 V.A.C. § 40-71-10.²

Virginia Constitution. Yet Defendants do not enforce this language to exclude some religious colleges like Liberty, Regent, and Eastern Mennonite. *See* VTAG Webpage at 2 (Exhibit 1) (listing several religious colleges as “eligible institutions”). Instead, they exclude majors that they deem too religious.

² The National Center for Education Statistics—an agency in the federal Department of Education—develops the Classification of Instructional Programs (“CIP”) coding system for the tracking and reporting of fields of study and program completions activity. *See What is the CIP?*, NATIONAL CENTER FOR EDUC. STATISTICS, <https://bit.ly/3Rm1owR> (last visited May 22, 2025).

69. So the State Council interprets the Tuition Assistance Grant Act to require review of both whether the primary purpose of the *institution* and whether the *program* itself is for religious training or theological education.

70. The State Council's exclusion of students pursuing educational programs that government officials deem to be for "religious training or theological education" from the Tuition Assistance Grant is referred to as the "VTAG religious exclusion."

71. The VTAG religious exclusion bars a significant array of programs/majors at several colleges and universities in the Commonwealth.

72. For example, the State Council's online degree inventory search tool shows that many programs are classified as CIP Code 39-series programs and are thus excluded from the Tuition Assistance Grant. *See* State Council Degree Inventory Searches for CIP Code 39 Programs, a true and correct copy of which is attached as **Exhibit 2**; *see also Search Degree Inventory*, STATE COUNCIL OF HIGHER EDUC. FOR VIRGINIA, <http://bit.ly/4hyUzTH> (last visited May 22, 2025).

73. Any Virginia student who pursues a CIP Code 39 program/major is categorically excluded from a Tuition Assistance Grant even if the student is otherwise eligible for an award.

74. Virtually all of these excluded programs are at religious colleges and universities.

75. But whatever interest the State Council may have in excluding these programs is not pursued evenhandedly.

76. The State Council does not exclude programs classified as CIP Code 38-series programs, which are labeled, “Philosophy and Religious Studies.”

77. Many colleges and universities in the Commonwealth offer CIP Code 38 religious programs that are eligible for the Tuition Assistance Grant. *See* State Council Degree Inventory Searches for CIP Code 38 Programs, a true and correct copy of which is attached as **Exhibit 3**.

78. And many colleges and universities promote that their CIP Code 38 religion programs help prepare students for future careers in ministry and for further religious training.

79. For instance, Hampton University states that its Bachelor of Arts in Religious Studies program—an eligible CIP Code 38 program—is “designed to sharpen the skills of students already in ministry” and to “prepare students for advanced studies, especially in religious education and theology.” *Religious Studies*, HAMPTON UNIV., <https://bit.ly/4j2vvp9> (last visited May 22, 2025).

80. Virginia Union University states that its Religious Studies major—an eligible CIP Code 38 program—“prepare[s] persons for graduate work in the discipline of religion and ministerial studies as well as those who seek to pursue religious vocations (i.e. youth ministers, pastoral assistants, associate ministers, etc[.]).” *Virginia Union University Catalog*,

p. 49, available at <https://bit.ly/420ARKJ> (last visited May 22, 2025).

81. Averett University states that its Religion Program—an eligible CIP Code 38 program—prepares students “for a career in Christian ministry” and “aims to graduate future leaders for churches, faith-based organizations, and missions.” *Religion Degree Program*, AVERETT UNIV., <https://bit.ly/3YAsB31> (last visited May 22, 2025).

82. And Virginia Wesleyan University streamlines the route to seminary school for students who complete courses in its Religious Studies program—an eligible CIP Code 38 program. Students who do so can get early admission at Duke Divinity School, guaranteed admission at Emory University’s Candler School of Theology, or a dual degree through United Theological Seminary. *Graduate Dual Degrees*, VIRGINIA WESLEYAN UNIV., <https://bit.ly/3Yd29fS> (last visited May 22, 2025).

83. In addition, some colleges offer music programs that are eligible for the Tuition Assistance Grant even though they are meant to prepare students for vocational music careers in ministry. For instance, Bluefield University offers a Church Music concentration in its Music program—an eligible program—that “prepares students for a professional vocational music ministry in the church.” *Music (BA)*, BLUEFIELD UNIV., <https://bit.ly/4iMLVX1> (last visited May 22, 2025).

84. Students can also double-major in an ineligible religious major and in an eligible major and still receive a full Tuition Assistance Grant for a term/semester so long as that student takes an “equal

or greater number of courses required for [the] eligible major or concentration” than courses for the ineligible religious major. 8 V.A.C. § 40-71-10.

85. So, for example, a student who double-majors in Pastoral Leadership (ineligible) and History (eligible) can still receive a full Tuition Assistance Grant if he takes three History courses and three (or less) Pastoral Leadership courses in a semester.

86. And “[e]xceptions may be made by” the State Council to this double-major rule if “based on circumstances beyond the control of the student.” 8 V.A.C. § 40-71-10.

87. Nor does the State Council exclude students who major in an eligible program and minor in an ineligible religious program.

88. For example, a student would be eligible for a Tuition Assistance Grant if he majors in History but minors in Pastoral Leadership.

89. But colleges and universities promote that their religion minor programs help prepare students for future careers in ministry and for further religious training.

90. For instance, Mary Baldwin University states that its minor in Religious Leadership and Ministry program gives students “the practical, theoretical, and ethical grounding needed to begin a vocation in the ministry of any faith.” *Religious Leadership and Ministry (Minor)*, MARY BALDWIN UNIV., <https://bit.ly/4j22cmr> (last visited May 22, 2025).

91. So the State Council will award grants to students pursuing CIP Code 38 religious programs; to

students double-majoring in an ineligible CIP Code 39 religious program along with an eligible program; and to students minoring in an ineligible religious program.

92. The State Council will award these grants even if these CIP Code 38 religious programs, double-major programs, and religious minor programs are designed to help students pursue a career in vocational ministry or further their religious training, like at seminary school.

2. The State Council Denies Cameron a Tuition Assistance Grant Because He is Majoring in Pastoral Leadership at Liberty University

93. Cameron Johnson is a 2025 graduate of Wilson Memorial High School in Fishersville, Virginia, just outside of Waynesboro.

94. Cameron played varsity baseball and excelled academically during his time in high school.

95. Cameron took advanced classes in arts and humanities at the Shenandoah Valley Governor's School part-time while also taking classes at Wilson Memorial.

96. The Shenandoah Valley Governor's School offers a unique curriculum for gifted students who excel academically.

97. Cameron is a Christian.

98. Cameron's sincere religious beliefs are based on and rooted in the Holy Bible, which he believes to be the supreme, authoritative, true Word of God.

99. Cameron’s parents—Regina and Timothy—are also Christians and share the same religious beliefs.

100. Regina and Timothy raised Cameron to prioritize his faith.

101. The Johnsons’ main reason that they bought their current home in Waynesboro is because it is located down the road from their church, Wayside Baptist Church.

102. Cameron is very involved at Wayside Baptist Church, including in the youth ministry.

103. Cameron also incorporated his faith in his daily school life.

104. For example, Cameron participated in the Augusta County Fellowship of Christian Athletes during high school.

105. Cameron believes every follower of Christ—regardless of occupation, position, location, or other circumstances—is compelled by the Bible to tell others about the Gospel of Jesus Christ.

106. For example, in the book of Matthew, Jesus told his disciples to “Go therefore and make disciples of all the nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things that I have commanded you.” *Matthew* 28:18–20a (NKJV); *see also* Mark 16:15 (NKJV) (“Go into all the world and preach the gospel to every creature”).

107. Cameron strives to live this biblical mandate out in his daily life.

108. Throughout high school, Cameron knew that he wanted to go to college to get a bachelor's degree.

109. Around age 15, Cameron believed that God was leading him to eventually, one day, go into ministry.

110. Cameron does not yet know whether this calling to ministry is a vocational calling, or a calling to minister to others in a secular career or workplace.

111. Cameron also believes he should be a leader in everything he does, including in the classroom, on the baseball diamond, at church, and in his future career.

112. And in his future career, whatever that may be, Cameron wants to unite, uplift, and build his community wherever he is at.

113. Cameron will pursue whatever career that he believes God calls him to.

114. Cameron applied and was accepted at Liberty University to start classes in the fall 2025 semester as a full-time, on-campus student.

115. Cameron decided to major in Pastoral Leadership.

116. Cameron selected Pastoral Leadership because he believes God called him to pursue it and because it will develop his leadership skills, gives him a foundation if he decides to further his education in graduate school, and can help prepare him if he does decide to one day go into vocational ministry.

117. Although Cameron is majoring in Pastoral Leadership, he is still open to careers other than those strictly in vocational ministry.

118. For instance, Cameron is interested in going into real estate or running a nonprofit focused on community building.

119. Cameron also plans to add a minor in business that will help him if he goes into a secular career.

120. In fact, if Cameron flipped his programs—majored in business and minored in Pastoral Leadership—he would be eligible for a Tuition Assistance Grant.

121. Cameron wants to be sure that whatever career he goes into that he will be able to financially provide for his future family.

122. Cameron's decision to major in Pastoral Leadership is an exercise of his religion regardless of what his career may end up being.

123. Upon information and belief, the majority of students who graduate from Liberty University with degrees classified as either CIP Code 38 or 39 programs go into secular vocations, rather than ministry vocations.

124. In January 2025, Cameron applied for a Tuition Assistance Grant through Liberty's financial aid office.

125. Cameron's chosen major is classified as a CIP Code 39 program and thus ineligible for a Tuition Assistance Grant.

126. On March 5, 2025, Cameron's request for a Tuition Assistance Grant was denied because of the State Council's VTAG religious exclusion. A true and correct copy of Cameron's VTAG Denial Email is attached as **Exhibit 4**.

127. The denial email came from Liberty's financial aid office because Tuition Assistance Grant applicants apply directly to their college or university, but the denial was required by the State Council's religious exclusion. *See* VTAG Denial Email at 1 (Exhibit 4) ("According to SCHEV regulations ..."); *see also* 8 V.A.C. § 40-71-10.

128. The State Council is excluding Cameron from a Tuition Assistance Grant because the State Council considers his major as being for religious training or theological education.

3. Luke Will Major in Music and Worship at Liberty University and Will Be Denied a Tuition Assistance Grant

129. Luke Thomas is 2025 graduate of Cosby High School in Midlothian, Virginia.

130. Luke was a key member of Cosby High School's choral programs. He was a member of the men's choir, chamber choir, and spotlight show choir, of which he was one of two male dance captains.

131. Cosby's choral programs are highly competitive. Students must audition and invest a lot of time to rehearsals, practice, and training. The spotlight show choir travels out of state for competitions and has consistently been nationally ranked.

132. Luke is passionate about music and he is equally passionate about his faith.

133. Luke is a Christian.

134. Like Cameron, Luke's sincere religious beliefs are based on and rooted in the Holy Bible, which he believes to be the supreme, authoritative, true Word of God.

135. Also like Cameron with his parents, Luke's parents—Tammy and Tim—share the same Christian beliefs.

136. Tammy and Tim raised Luke to prioritize his faith.

137. The Thomases attend The Chapel church in Midlothian, where Luke volunteers as a greeter and is on the worship (music) team.

138. Luke believes every follower of Christ—regardless of occupation, position, location, or other circumstances—is compelled by the Bible to tell others about the Gospel of Jesus Christ.

139. Luke didn't originally plan to go to college. Instead, he thought he would enter a trade or start a small business in landscaping or pressure washing—jobs that he did during the summer while in high school.

140. But during his junior year, Luke discovered that he could go to college and pursue a career in music.

141. Around the same time, he also believed that God wanted him to use his musical talents, at some point in his future, in the ministry field, perhaps as a worship pastor or director.

142. So Luke decided to look for college programs where he could do both: further his musical education and prepare him if he eventually went into ministry.

143. Luke was accepted at Liberty University to start classes in the fall 2025 semester as a full-time, on-campus student.

144. Luke intends to major in Music and Worship because it is a program where he can follow both of his passions.

145. Although Luke intends to major in Music and Worship, he is still open to careers other than those strictly in vocational ministry.

146. For example, Luke may end up pursuing a career in commercial music as a singer or songwriter, and he also intends to start his own business one day regardless of what job he might have.

147. Luke does not yet know whether God will lead him into vocational ministry after college, or whether he will go into commercial music or some other secular career where he can still share the Gospel with others.

148. Luke will pursue whatever career that he believes God calls him to.

149. Luke's decision to major in Music and Worship is an exercise of his religion regardless of what his career may end up being.

150. Liberty's Music and Worship program is classified as a CIP Code 39 program.

151. When Luke informed Liberty’s financial aid office that he would be majoring in Music and Worship, they told him that he would be ineligible for the Tuition Assistance Grant because of the VTAG religious exclusion.

152. Luke is currently an “undeclared” major, but he must declare as a Music and Worship major to ensure that he can take the required courses needed for the Bachelor’s in Music and Worship.

153. Luke will declare his major in Music and Worship by October 20, 2025, so that he can enroll in the required courses that he must take in the Music and Worship program for the spring 2026 semester and beyond.

154. Once Luke declares his Music and Worship major, the State Council will deny Luke a Tuition Assistance Grant for the spring 2026 semester, and for all subsequent semesters.

155. The State Council will exclude Luke from a Tuition Assistance Grant starting in the spring 2026 semester because the State Council considers the Music and Worship program as being for religious training or theological education.

156. Luke needs injunctive relief before the start of the spring 2026 semester so that he will not be denied a Tuition Assistance Grant.

**B. The Department Excludes Trace Stevens
from a National Guard Grant**

**1. The National Guard Grant Program
and Its Religious Exclusion**

157. The Virginia Department of Military Affairs offers a similar Tuition Assistance Grant Program for members of the Virginia National Guard.

158. The National Guard Grant is available to any Virginia National Guard member who: (i) has at least two years remaining on his/her service obligation; (ii) has satisfactorily completed initial active duty service (e.g. basic training); (iii) is satisfactorily performing his/her duty in the National Guard; and (iv) is enrolled “at any public institution of higher education or accredited nonprofit private institution of higher education whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.” Va. Code § 23.1-610(A).

159. The award amount is the “difference between the full cost of tuition and any other educational benefits for which [the student] is eligible as a member of the National Guard” and depends on sufficient appropriations. Va. Code § 23.1-610(A).

160. The maximum possible grant award, annually, is up to \$20,000 per student.

161. The National Guard Grant *currently* is a reimbursement grant. Applicants must pay their financial obligations at the start of a semester and then submit proof of acceptable academic performance and good standing to the Department

within 30 days of the end of the semester. Va. Code § 23.1-610(B)(2).

162. But the Virginia General Assembly recently amended the National Guard Grant statute. 2025 Virginia Laws Ch. 474 (H.B. 1595). Set to go into effect on July 1, 2025, the amendment changes the grant from a reimbursement grant (sent directly to recipients after a semester) to a grant sent to colleges at the beginning of a semester to be credited to each recipient's account, similar to VTAG. *Id.*

163. The Department uses the National Guard Grant to recruit individuals for service in the Virginia National Guard. *See* Va. Code § 23.1-610(D) (funding for this recruitment).

164. The Department administers the National Guard Grant Program in accordance with Command Policy 22-023, which was signed by Defendant Ring's predecessor. A true and correct copy of Command Policy 22-023 is attached as **Exhibit 5**.

165. Students can use the National Guard Grant towards a degree at each level of study—for example, the grant can be used to obtain an associate, bachelor's, *and* graduate degree. *See* Command Policy 22-023 § 8(c) (Exhibit 5).

166. Like the Tuition Assistance Grant Act, the National Guard Grant statute's text excludes students at "nonprofit private institutions of higher education whose primary purpose" is to provide "religious training or theological education." *Compare* Va. Code § 23.1-610(A) *with* Va. Code § 23.1-628(A).

167. But unlike the Tuition Assistance Grant Act, nothing in the National Guard Grant statute

requires the Department to review an applicant's program, nor does the statute prohibit grants for programs that are for "religious training or theological education."

168. Although the National Guard Grant statute does not prohibit grants based on the type of program, the Department has unilaterally decided to exclude students who are pursuing certain religious programs even if those programs are at approved private colleges.

169. In other words, the National Guard Grant statute requires the Department to review the primary purpose of the *institution*, but the Department reviews whether a certain *program* is for religious training or theological education.

170. And unlike the State Council, which categorically excludes all Code 39 programs, the Department simply exercises its discretion to decide whether a particular program is too religious and therefore excluded from eligibility.

171. As a result, some religious programs are approved for VTAG, but the Department arbitrarily decides that those same programs are not approved for the National Guard Grant.

172. The Department excludes students who are pursuing programs that it decides, in its complete discretion, are for religious training or theological education.

173. The Department has not adopted regulations or publicly available guidance explaining which degrees are for religious training or theological

education but instead makes determinations on a case-by-case basis.

174. The Department simply says, “[i]n accordance with the Constitution of Virginia, Article I., Section 16, theological degrees are ineligible.” Command Policy 22-023 § 7(a)(6)(c) (Exhibit 5); *see also Frequently Asked Questions*, NATIONAL GUARD STATE TUITION ASSISTANCE PROGRAM, <https://bit.ly/4iXDXG5> (last visited May 22, 2025) (stating the same under “Can I apply for Tuition Assistance for religious courses?”).

175. Article I, Section 16 of the Virginia Constitution contains the free exercise and establishment clauses of the state constitution.

176. The National Guard Grant statute does not mention Article I, Section 16 of the Virginia Constitution.

177. The Department has not publicly defined what constitutes “theological degrees.”

178. The Department’s exclusion of those students from the National Guard Grant who are pursuing educational programs that the Department determines are for religious training or theological education is referred to as the “National Guard religious exclusion.”

179. The Department would award a National Guard Grant to a student who majors in religion at a secular private or public college because it does not deem those programs at those institutions as being for religious training or theological education.

2. Trace Enlists After the National Guard Tells Him the Grant Can Help Pay for a Religiously-Oriented College Degree

180. Trace Stevens is a Private First Class in the Virginia Army National Guard.

181. Trace is a Christian.

182. Trace's sincere religious beliefs are based on and rooted in the Holy Bible, which he believes to be the supreme, authoritative, true Word of God.

183. Similar to Cameron and Luke, Trace was raised by his mother and stepfather in a Christian home, routinely attending and being actively involved in their local church.

184. Trace currently attends Crosswalk Community Church in Williamsburg.

185. Trace believes every follower of Christ—regardless of occupation, position, location, or other circumstances—is compelled by the Bible to tell others about the Gospel of Jesus Christ.

186. Trace graduated from Bruton High School in June 2023.

187. While in high school, Trace originally intended to enlist in the active-duty Air Force after graduation.

188. Trace has always had a desire to serve his country, and he greatly admires and respects the men and women of the armed forces. Trace's father and stepfather are both Air Force veterans.

189. But during his senior year, Trace believed that God wanted him to pursue a college education to help prepare him for a future career in some type of ministry work.

190. Trace decided that he should go to college, but he was concerned about how he would pay for it.

191. Trace did not have the financial means to pay for college and he desperately wanted to avoid going into debt to go to college. So Trace began to explore other financial assistance options for college.

192. In the spring of 2023, Trace met a Virginia Army National Guard recruiter at his high school.

193. At that time, Trace was planning to do the online ministerial leadership program at Southeastern University—a Christian university in Florida.

194. The recruiter told Trace that the National Guard Grant Program could assist him with paying for college if he joined the National Guard.³

195. The recruiter also told Trace about the federal tuition assistance program available through the U.S. Army/Department of Defense.

196. The recruiter told Trace that his chosen major and university were eligible for both grant programs.

197. Trace did not know that his chosen major and university were *not* eligible for the National

³ Virginia Code § 23.1-610(D) expressly authorizes the Department to use the National Guard Grant Program to recruit members for the National Guard.

Guard Grant, and he relied on the recruiter's representations about the Program.

198. Trace enlisted in the Virginia National Guard in May 2023, mainly because of the National Guard Grant Program, which he intended to use to help him pay for college.

199. In August 2023, Trace learned for the first time—through education benefits paperwork—that the National Guard Grant could not be used for “religious studies.”

200. Trace called the Department's National Guard Grant Program office, which confirmed that his program at Southeastern University was ineligible because it was religious and was at an out-of-state college.

201. Trace then called the Governor's office to see if the Department would accommodate his chosen program and give him a grant.

202. The Department emailed Trace a response from Defendant Ring, which stated that Trace's program was eligible for the U.S. Army's federal tuition assistance program but that his “desired theological degree program [was] ineligible” for the National Guard Grant, per the Virginia Code. A true and correct copy of Defendant Ring's Letter is attached as **Exhibit 6**.

203. Trace shipped out for basic training the next day. He returned in January 2024.

204. Given the timing of his basic training, Trace did not enroll in classes at Southeastern University.

205. Once he returned from basic training, Trace decided to apply at Liberty University because its tuition was significantly more affordable (being in Virginia) and Trace was hopeful he would be able to use the National Guard Grant there.

206. Trace was accepted at Liberty University to start in the fall 2024 semester. He decided to pursue a Bachelor of Science in Religion (General Track).

207. Trace selected this program because he believes God called him to pursue it and because it will help prepare him if he decided to go into ministry in the future, and it also gives him the qualifications to become an officer in the Army.

208. Trace is interested in one day working in ministry and his primary plan is to become a chaplain in the military.

209. While Trace believes that he may one day go into vocational ministry—whether as a chaplain or otherwise—he is interested in other careers as well.

210. For example, Trace has considered a future career in law enforcement or a future full-time military career as an officer.

211. Trace is also interested in becoming a civilian pilot.

212. Trace will pursue whatever career that he believes God calls him to.

213. Trace's decision to major in Religion is an exercise of his religion regardless of what his career may end up being.

3. The Department Denies Trace a National Guard Grant Because He's Majoring in Religion at Liberty University

214. As explained above, unlike the Tuition Assistance Grant Program (VTAG), the Department does not provide any regulations or guidance as to what qualifies as “religious training or theological education.”

215. As of July 2024, when Trace was accepted at Liberty University, the Department had simply told Trace that the National Guard Grant cannot be used for religious degrees or for a “theological degree program.” Ring August 2023 Letter to Stevens (Exhibit 6).

216. Given the lack of any Department guidance about what constitutes “religious degrees” or a “theological degree program,” Trace emailed Department staff in July 2024 asking if he would be eligible for a grant while attending Liberty University online.

217. The Department responded that online programs at Liberty University were eligible, reiterated that the National Guard Grant could not be used for “religious degrees,” but stated that it “would possibly pay for a particular religious ‘required’ course for another type of degree to complete a semester.” *See* Stevens-Gregg July 2024 Emails at 1, a true and correct copy of which is attached as **Exhibit 7**.

218. At that time, Trace said he was going to be non-degree seeking but he ultimately decided to

major in Religion before the start of the fall 2024 semester.

219. Because the Department told Trace that the National Guard Grant could not be used for religious degrees, and because he was majoring in Religion, Trace did not apply for a National Guard Grant for the fall 2024 semester.

220. But Trace applied for a National Guard Grant for the spring 2025 semester, believing that his chosen degree program should be eligible.

221. Trace had to submit additional paperwork during the spring 2025 semester. *See, e.g.*, Stevens Registration Package, a true and correct copy of which is attached as **Exhibit 8**.

222. That additional paperwork required Trace to sign and send the Department a promissory note in which he had to agree that the National Guard Grant is not being “used to fund degrees for religious training or theological education.” *See* Stevens Registration Package at 8 (Exhibit 8).

223. Around the same time Trace applied for the spring 2025 grant, he also learned that his chosen major in Religion would be eligible for the State’s Tuition Assistance Grant Program (VTAG)—because it is a CIP Code 38 program—even though that program excludes degrees for “religious training and theological education.” *See* Code 38 Degree Search Results at 3 (Exhibit 3) (listing Liberty’s “Religion/Religious Studies” program).

224. Expecting state officials to interpret identical statutory language consistently, Trace noted the inconsistency and again asked the Department

whether he was eligible for a National Guard Grant. See Stevens 2025 Emails at 4, a true and correct copy of which is attached as **Exhibit 9**.

225. The Department again said that the National Guard Grant cannot go “towards religious degrees.” Stevens 2025 Emails at 3 (Exhibit 9).

226. Trace responded that the Department did not directly answer whether *his chosen program* was ineligible and so he would proceed by submitting the remaining paperwork. Stevens 2025 Emails at 2 (Exhibit 9).

227. After this response, Defendant Unmussig emailed Trace, telling him that he was excluded from receiving a National Guard Grant:

The Virginia National Guard State Tuition Assistance Program is operated by the Virginia Department of Military Affairs (DMA), governed by the Code of Virginia §23.1-610. The code clearly states that this grant cannot be used to provide religious training or theological education. The other grant you mentioned, VTAG, is managed by another organization within the State government that DMA has nothing to do with. DMA cannot violate the law and award you a grant for your B.S. degree in religion from Liberty University using funds from [the National Guard Grant Program]. I thought that Mrs. Gregg was quite clear on this question’s response, we cannot process any reimbursements for this degree program under [the National Guard Grant Program].”

Stevens 2025 Emails at 1 (Exhibit 9).

228. Despite Defendant Unmussig's response, the National Guard Grant statute does not "clearly state[] that this grant cannot be used for religious training or theological education." Stevens 2025 Emails at 1 (Exhibit 9). Rather, the statute states that students cannot get a grant if they attend a college that has a "primary purpose" of providing "religious training or theological education." Va. Code § 23.1-610(A).

229. The Department is thus excluding Trace from a National Guard Grant because the Department considers his major as one being for religious training or theological education, even though the statute does not prohibit certain programs, and even though Trace's Religion major is eligible for the Tuition Assistance Grant (VTAG).

C. The Religious Exclusions Discriminate Against Religion and Irreparably Harm Cameron, Luke, and Trace

230. The State Council denied Cameron a Tuition Assistance Grant because of the VTAG religious exclusion.

231. Cameron is otherwise qualified for, and would have received, a Tuition Assistance Grant but for the fact that he is majoring in Pastoral Leadership.

232. Cameron has been a domiciliary resident of Virginia his entire life; is enrolled full-time in an undergraduate program for the 2025-26 academic year at Liberty University (a participating eligible institution); has complied with federal selective

service registration requirements; submitted an application for an award by the September 15, 2025, deadline; and does not participate in the Virginia Women's Institute for Leadership at Mary Baldwin College. *See* 8 V.A.C. § 40-71-40(C); *see also* Va. Code § 23.1-631.

233. Cameron desires and intends to participate in the Tuition Assistance Grant Program over the next four academic years, while he is a full-time student at Liberty University.

234. Cameron will major in Pastoral Leadership for the next four academic years.

235. As a result, Cameron will continue to be denied a Tuition Assistance Grant—just as he was for the upcoming 2025-2026 academic year.

236. Cameron's tuition cost for the fall 2025 semester at Liberty is over \$12,000.

237. Cameron's combined tuition and other fees for the fall 2025 semester at Liberty are over \$22,000.

238. Cameron's future semesters at Liberty University are expected to cost at least as much as the fall 2025 semester.

239. More likely, those future expenses will increase.

240. At the current 2025-2026 Tuition Assistance Grant award amount, Cameron would be able to receive over \$20,000 in Tuition Assistance Grants during his undergraduate career but for the VTAG religious exclusion.

241. Because Cameron cannot receive a Tuition Assistance Grant, he will likely have to take out additional student loans to pay for college.

242. If the VTAG religious exclusion is enjoined, Cameron can receive a Tuition Assistance Grant for the fall 2025 semester, and for future semesters.

243. Likewise, the State Council will deny Luke a Tuition Assistance Grant for the spring 2026 semester, and for subsequent semesters, because of the VTAG religious exclusion.

244. Luke will declare as a Music and Worship major no later than October 20, 2025, thereby making him ineligible for the Tuition Assistance Grant for the spring 2026 semester and for subsequent semesters.

245. Luke must declare as a Music and Worship major before the spring 2026 semester so he can ensure that he can register for the required courses in the Music and Worship program.

246. Because of the VTAG religious exclusion, Luke will be denied a Tuition Assistance Grant starting in the spring 2026 semester and for subsequent semesters.

247. Luke's tuition and fees per semester are expected to cost more than \$20,000.

248. Luke is otherwise qualified for, and would receive, a Tuition Assistance Grant for the spring 2026 semester, and for subsequent semesters, but for the fact that his major will be Music and Worship.

249. The Department denied Trace Stevens a National Guard Grant because of the National Guard religious exclusion.

250. Trace is otherwise qualified for, and would have received, a National Guard Grant but for the fact that he is majoring in Religion.

251. Trace is a member of the Virginia Army National Guard and has four years remaining on his service contract; has satisfactorily completed his required initial active-duty service; is satisfactorily performing his duty in accordance with regulations of the National Guard; and is enrolled at an eligible institution for the National Guard Grant. He also applied for a spring 2025 grant by the November 1, 2024, deadline, fully paid for the spring 2025 semester at Liberty, and will provide the Department with written proof of acceptable academic performance and good standing with Liberty by the required deadline. *See* Va. Code § 23.1-610.

252. Trace desires and intends to participate in the National Guard Grant Program so long as he is in college.

253. Trace is on track to graduate with his Bachelor of Science in Religion from Liberty at the end of the summer 2025 semester.

254. Trace will take classes at Liberty University for the summer 2025 semester.

255. Trace will continue to major in Religion during the summer 2025 semester.

256. As a result, Trace will continue to be denied a National Guard Grant for the summer 2025

semester—just as he was for the spring 2025 semester.

257. The Department has denied Trace a National Guard Grant even though his chosen program in Religion (General Track) is an eligible program for the State's Tuition Assistance Grant Program and for federal tuition assistance through the U.S. Army.

258. The Department has thus exercised its discretion to unilaterally decide that Trace's chosen program is one for religious training or theological education and is therefore excluded.

259. Trace's cost of tuition and fees for the spring 2025 semester was \$6,359.99.

260. For the spring 2025 semester, Trace received \$2,250 in federal tuition assistance through the U.S. Army's tuition assistance program.⁴

261. Trace also received a military tuition discount from Liberty University.

262. So Trace owed over \$2,000 out of pocket for the spring 2025 semester.

263. But for the National Guard religious exclusion, the Department would send Trace a National Guard reimbursement grant for this amount

⁴ Tuition assistance through the Army's tuition assistance program is capped at \$4,500 per fiscal year, which runs from October 1 through September 30. Trace received \$2,250 from the Army's tuition assistance program for the fall 2024 semester. Accordingly, he will not receive any Army tuition assistance money for the summer 2025 semester.

within approximately 60 days after the spring 2025 semester.

264. Trace applied to receive a National Guard Grant for the summer 2025 semester.

265. Trace's tuition and fees for the upcoming summer 2025 semester will cost \$3,000.

266. Trace will have to pay this full amount out of pocket.

267. But for the National Guard religious exclusion, Trace would receive a National Guard reimbursement grant after the summer 2025 semester, covering his out-of-pocket cost of tuition.

268. Trace applied for and (if accepted) will enroll in Liberty's Master of Divinity program for the fall 2025 semester.

269. Although the National Guard Grant can be used for a graduate degree, Trace will not be eligible for a grant while pursuing a Master of Divinity degree because of the National Guard religious exclusion.

270. If the National Guard religious exclusion is enjoined, Trace can receive a National Guard Grant for the spring and summer 2025 semesters, and for future semesters while in graduate school.

271. The sole reason that Defendants denied Cameron and Trace grants (and will deny Luke a grant) is because Defendants deem their chosen programs as being for religious training or theological education.

272. Students can pursue myriad different secular programs and even some religious programs

in college while remaining eligible for both the State Tuition Assistance and National Guard Grants—but the one thing they cannot pursue are programs that government officials deem to be for religious training or theological education.

273. For example, if Cameron, Luke, and Trace went to Roanoke College and majored in Cannabis Science, or went to other schools and majored in programs like Mathematics, History, or Music, they would receive their grants.

274. Luke could even study Music at Washington and Lee University where he would take courses like “Music Theory” and “Conducting and Methods.” *See Music Major Leading to BA Degree*, WASHINGTON AND LEE UNIV., <https://bit.ly/3Yq0qEO> (last visited May 22, 2025). And those courses are like courses that he will take as part of his Music and Worship major at Liberty—courses like “Harmonic Practices and Theory” and “Basic Conducting.” Luke could use a Tuition Assistance Grant for the former music program, but not the latter.

275. Cameron, Luke, and Trace also would receive their respective grants if they studied Religious Studies at the University of Richmond or Religion at Washington and Lee University—both secular schools—because Defendants do not consider those programs as being for religious training or theological education.

276. Indeed, Cameron and Luke could receive Tuition Assistance Grants if they chose any of the CIP Code 38 religious programs available at various colleges in the Commonwealth. *See Code 38 Degree Search Results* (Exhibit 3) (listing such programs).

277. Plus, Cameron could double-major in Pastoral Leadership (and Luke in Music and Worship) together with an eligible program and still receive a grant per the State Council's double-major rule.

278. Or, Cameron could minor in Pastoral Leadership and major in an eligible program like business, and still receive a grant.

279. Defendants' religious exclusions discriminate against, and amongst, religion.

280. Defendants' religious exclusions are irreparably harming Cameron, Luke, and Trace each passing day.

281. Defendants put Cameron, Luke, and Trace to the following choice:

(A) pursue their religious studies, and thus forfeit a public tuition grant; or

(B) abandon their religious studies, and thus receive a public tuition grant.

282. This forces Cameron, Luke, and Trace to choose between their religious character and exercise or tuition grants that they desperately need to help them pay for college.

283. Putting Cameron, Luke, and Trace to this choice is unfair and unconstitutional.

284. Cameron, Luke, and Trace—and their parents—pay taxes to Virginia.

285. Yet they are being denied publicly funded grants that are supposed to help all Virginians get a college education.

286. Monetary damages are an inadequate remedy because they fail to end the constitutional injury of depriving Cameron, Luke, and Trace publicly funded grants altogether due to their religious character and exercise and are also subject to immunity defenses.

287. Monetary damages are an inadequate remedy due to sovereign immunity.

288. Monetary damages are an inadequate remedy because Cameron, Luke, and Trace must make decisions about their college programs now, and whether they know they will receive grant money or not impacts these decisions.

289. For instance, because Cameron has been denied a grant for the fall 2025 semester, he must change his financial plans and may have to take out additional loans. The same is true for all future semesters.

290. The religious exclusions also pressure Cameron, Luke, and Trace to change their religious programs so that they can receive grants to help them pay for a college education.

291. Cameron, Luke, and Trace should not have to abandon their chosen religious studies—something that they believe God has called them to pursue—simply to be treated equally to other students.

292. Cameron, Luke, and Trace need judicial relief declaring that Defendants' religious exclusions are unconstitutional.

293. Cameron, Luke, and Trace also need injunctive relief that prohibits Defendants from enforcing their religious exclusions—including by prohibiting Defendants from refusing, denying, or withholding Tuition Assistance and National Guard Grants to them.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Free Exercise Clause

294. Plaintiffs incorporate by reference paragraphs 1–293.

295. Cameron, Luke, and Trace exercise their religion by choosing college programs that they believe God has instructed them to pursue—Pastoral Leadership for Cameron, Music and Worship for Luke, and Religion for Trace.

296. Cameron, Luke, and Trace exercise their religion by choosing to pursue these programs even though they are open to various future careers, including both secular and ministry vocations.

297. Defendants’ religious exclusions violate the Free Exercise Clause several ways.

Religious Discrimination; Exclusion from Otherwise Available Public Benefits

298. The government violates the Free Exercise Clause when it disqualifies otherwise eligible persons or organizations from receiving otherwise available government benefits “solely because of their religious character,” *Trinity Lutheran*, 582 U.S. at 462, their “religious status,”

Espinoza, 591 U.S. at 479, or “on the basis of their religious exercise,” *Carson*, 596 U.S. at 789.

299. This is true “[r]egardless of how the benefit and restriction are described.” *Carson*, 596 U.S. at 789.

300. So the government cannot “exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits.” *Id.* at 789.

301. Defendants exclude Cameron, Luke, and Trace from otherwise available government benefits—Tuition Assistance and National Guard Grants—solely because of their anticipated religious use, religious character, and religious exercise.

302. The State Council offers a public benefit: Tuition Assistance Grants.

303. The State Council excludes Cameron and Luke from the grant because they chose to major in religious programs.

304. The State Council’s VTAG religious exclusion discriminates against religion and triggers strict scrutiny.

305. The Department offers a public benefit: National Guard Grants.

306. The Department excludes Trace from the grant because he chose to major in a religious program.

307. The Department’s National Guard religious exclusion discriminates against religion and triggers strict scrutiny.

308. Both the Tuition Assistance Grant Program and National Guard Grant Program also discriminate based on religious character and status by excluding otherwise eligible institutions that have a “primary purpose” of providing “religious training or theological education.”

Religious Gerrymandering and Targeting; Not Neutral or Generally Applicable

309. Defendants’ religious exclusions require Cameron, Luke, and Trace to abandon their chosen religious college programs to be eligible for public grants.

310. Defendants’ application of the religious exclusions substantially burden Cameron’s, Luke’s, and Trace’s religious exercise.

311. Defendants’ religious exclusions are not neutral or generally applicable.

312. Defendants’ religious exclusions are not neutral or generally applicable because they target and facially discriminate against religion.

313. Laws that “target” religion or “restrict practices because of their religious motivation” are not neutral towards religion. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). And laws cannot discriminate against “some or all religious beliefs.” *Id.* at 532.

314. The National Guard Grant statute does not ban grants to students who choose religious *programs*; it requires students to attend a “public institution of higher education or accredited nonprofit private institution of higher education *whose primary*

purpose is to provide collegiate or graduate education and not to provide religious training or theological education.” Va. Code § 23.1-610(A) (emphasis added).

315. The Department has used its discretion to unilaterally create an additional rule—not found in the statute—that specific religious programs at those same schools are for religious training or theological education and thus ineligible.

316. Similarly, the State Council does not enforce the “primary purpose” language of the Tuition Assistance Grant Act to exclude several religious colleges.

317. But the State Council has created a rule that specific religious programs at those same schools are for religious training or theological education.

318. Moreover, Defendants have the individualized discretion to determine that colleges in fact do have a “primary purpose” of providing “religious training or theological education” and can completely ban entire schools from the grant programs.

319. Defendants’ religious exclusions create a religious gerrymander that target and single-out only those religious programs that government officials decide (in their discretion) are too religious.

320. This arbitrary discretion renders Defendants’ religious exclusions not neutral or generally applicable and shows hostility towards students who choose religious programs that Defendants deem to be too religious.

321. Defendants' religious exclusions are not neutral or generally applicable because they treat comparable secular activity more favorably than Cameron's, Luke's, and Trace's religious exercise by permitting students who major in any secular program, including secular religious studies, to receive grants.

322. The VTAG religious exclusion is not neutral or generally applicable because the State Council also treats some religious activity better than Cameron's and Luke's religious exercise by permitting students who major in CIP Code 38 religious programs to receive a Tuition Assistance Grant.

323. The VTAG religious exclusion is not neutral or generally applicable because the double-major rule contains a mechanism for individualized exemptions that allows the State Council to exempt students if it deems there to be "circumstances beyond the control of the student." 8 V.A.C. § 40-71-10.

324. The National Guard religious exclusion is not neutral or generally applicable because the Department administers it through a system of individualized assessments by deciding, on a case-by-case basis, whether a particular program is one for "religious training or theological education" and thereby excluded from the National Guard Grant Program.

325. The National Guard religious exclusion is not neutral or generally applicable because the Adjutant General has authority to modify the National Guard Grant Program and to exempt

students from National Guard Grant Program requirements.

326. The National Guard religious exclusion is not neutral or generally applicable because the Department can accommodate students, “on a case-by-case basis,” who take “special courses” at Virginia schools. Command Policy 22-023 § 7(a)(6) (Exhibit 5).

327. Because the VTAG and National Guard religious exclusions are not neutral or generally applicable, they trigger strict scrutiny.

328. Defendants’ religious exclusions do not serve a compelling interest and are not narrowly tailored to achieve any purported compelling interest, and therefore violate the Free Exercise Clause of the First Amendment.

SECOND CLAIM FOR RELIEF

Violation of the Religion Clauses: Religious Favoritism and Entanglement

329. Plaintiffs incorporate by reference paragraphs 1–293.

330. The Establishment Clause forbids the government from preferring and favoring some religious beliefs over others. *Larson v. Valente*, 456 U.S. 228, 244 (1982).

331. “This constitutional prohibition of denominational preferences is inextricably connected with the continuing vitality of the Free Exercise Clause.” *Id.* at 245.

332. Defendants favor certain religions and religious programs over others.

333. The State Council prefers and favors religious programs classified as CIP Code 38 religious programs by allowing them to be eligible for the Tuition Assistance Grant while excluding CIP Code 39 religious programs.

334. The State Council has thus deemed that CIP Code 38 religious programs are not ones for “religious training or theological education”—even though many of these programs are designed to prepare students for future religious vocations and education—and has deemed CIP Code 39 religious programs as ones for “religious training or theological education.”

335. So the State Council considers CIP Code 39 programs as too religious and excludes them from participation in the Tuition Assistance Grant Program. This requires the State Council to entangle itself in religious matters.

336. The Department likewise does not deem religious majors at secular private schools and public schools to be for “religious training or theological education” and students who pursue those programs at those schools can receive a National Guard Grant.

337. The Department favors students who pursue religious programs at secular private schools and public schools to the detriment of students who pursue religious programs at religious schools.

338. The Department exercises its discretion in deciding whether a program is for religious training or theological education. This requires the Department to entangle itself in religious matters.

339. Defendants' disparate treatment amongst religious programs is "based on the degree of religiosity" of each program and therefore discriminates against students "on the basis of the pervasiveness or intensity of their belief." *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1259 (10th Cir. 2008).

340. "Any attempt to give effect to such a distinction" between different religious programs "by scrutinizing whether and how a religious [student] pursues [his or her] educational mission" causes "state entanglement with religion and denominational favoritism." *Carson*, 596 U.S. at 786.

341. Defendants' religious favoritism and entanglement triggers strict scrutiny.

342. Defendants' religious exclusions do not serve a compelling interest and are not narrowly tailored to achieve any purported compelling interest, and therefore violate the Religion Clauses of the First Amendment.

THIRD CLAIM FOR RELIEF

Violation of the Equal Protection Clause

343. Plaintiffs incorporate by reference paragraphs 1–293.

344. The Equal Protection Clause prohibits the government from denying "to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

345. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike" and prohibits the

government from creating “arbitrary or irrational” distinctions between classes of people. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 446 (1985).

346. Defendants’ religious exclusions treat classes of students differently based on the nature of their chosen programs.

347. Defendants’ religious exclusions create arbitrary and irrational distinctions based on nothing more than government officials’ discretion about whether a certain program is too religious.

348. For instance, the Department arbitrarily treats Trace worse than other students by excluding him from a National Guard Grant even though his major in Religion (General Track) is eligible under the Tuition Assistance Grant Program (VTAG).

349. Defendants thus treat Cameron, Luke, and Trace (ineligible for grants) worse than similarly situated students who pick other majors (eligible for grants) based on the religiosity of their programs.

350. Religion is a suspect class.

351. Defendants’ unequal treatment is the result of intentional discrimination.

352. For Defendants to treat Cameron, Luke, and Trace dissimilarly from other students, they must have a compelling reason and such treatment must be the least restrictive means of achieving that purported interest.

353. Defendants do not have a compelling reason to justify this disparate treatment of Cameron,

Luke, Trace, and other students like them who choose “ineligible” religious programs.

354. Excluding Cameron, Luke, and Trace—and other students like them—from public grants is not narrowly tailored to achieve any purported compelling government interest.

355. Defendants’ religious exclusions are not rationally related to any legitimate government interest.

356. Defendants’ religious exclusions therefore violate the Equal Protection Clause of the Fourteenth Amendment.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

- (A) Declare that the VTAG religious exclusion—whether rooted in and required by the Tuition Assistance Grant Act (Va. Code § 23.1-628 *et seq.*), Tuition Assistance Grant regulations (8 V.A.C. § 40-71-10 *et seq.*), or the Virginia Constitution—violates the Free Exercise, Establishment, and Equal Protection Clauses of the United States Constitution, as applied to Cameron Johnson and Luke Thomas, and facially.
- (B) Declare that the National Guard religious exclusion—whether rooted in and required by Va. Code § 23.1-610, the Department’s Command Policy, or the Virginia Constitution—violates the Free Exercise, Establishment, and Equal Protection Clauses

of the United States Constitution, as applied to Trace Stevens, and facially.

- (C) Enter a preliminary and permanent injunction prohibiting the State Council of Higher Education for Virginia from implementing and enforcing the VTAG religious exclusion as applied to Cameron Johnson and Luke Thomas, and facially.
- (D) Enter a preliminary and permanent injunction prohibiting the Virginia Department of Military Affairs from implementing and enforcing the National Guard religious exclusion as applied to Trace Stevens, and facially.
- (E) Award nominal damages for the past and ongoing constitutional violations.
- (F) Award Plaintiffs reasonable costs and attorneys' fees.
- (G) Award any other relief that this Court deems equitable, just, and proper.

Dated: May 28th, 2025

s/ Jacob E. Reed

Jacob E. Reed

VA Bar No. 97181

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Attorneys for Plaintiffs
* *Pro hac vice admission*
filed herewith

VERIFICATION OF COMPLAINT

I, Cameron Johnson, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing Verified Complaint and the factual allegations contained therein are true and correct to the best of my knowledge.

Executed on May 19, 2025, in Waynesboro, Virginia.

/s/ Cameron Johnson
Cameron Johnson

VERIFICATION OF COMPLAINT

I, Luke Thomas, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing Verified Complaint and the factual allegations contained therein are true and correct to the best of my knowledge.

Executed on May 13, 2025, in Moseley, Virginia.

/s/ Luke Thomas
Luke Thomas

VERIFICATION OF COMPLAINT

I, Trace Stevens, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing Verified Complaint and the factual allegations contained therein are true and correct to the best of my knowledge.

Executed on May 26, 2025, in Williamsburg, Virginia.

/s/ Trace Stevens
Trace Stevens

118a

From: finaid@liberty.edu
Date: March 5, 2025 at 1:55:51 PM EST
To: 778johnson@gmail.com
Subject: Re: [External] Outstanding items

Good Afternoon,

Thank you for contacting Liberty University's financial aid office!

After reviewing your account, it appears your account has been reviewed for Virginia Tuition Assistance Grant eligibility. Unfortunately, the Virginia Tuition Assistance Grant application that you submitted has been denied for 2025-2026 academic year. It is not evident from your application that you meet the qualifications to receive this grant. Your award has been denied for the following reason(s):

You are in a CIP code 39 program (examples listed below see Financial Aid webpage for more) and are not eligible for VTAG. According to SCHEV regulations, VTAG shall be used for undergraduate work "other than those leading to religious training or theological education".

*ICLA, LBIW, ICMD, LBIP, PASL, PAST, WRBI, WRBU, WRCC, WRPL, WRSP, WRTM, WRWL, WRWO, WRYO

*There are no grounds to appeal for this regulation.

Please continue to monitor your Student ASIST account for any updates.

Please complete Financial Check-In for the Fall 2025 semester by August 8th, 2025.

It's been my privilege serving you today and if you need additional assistance, please chat with us online

119a

at <https://www.liberty.edu/student-financial-services/contact-us/>, email financialaid@liberty.edu or call (888) 583-5704.

Blessings,

Ashleigh Pollard Financial
Aid Advisor 1 Financial
Aid
(888) 583-3704

120a



DEPARTMENTS OF THE ARMY
AND THE AIR FORCE
JOINT FORCE
HEADQUARTERS - VIRGINIA
6090 STRATHMORE ROAD,
BLDG 430
RICHMOND, VIRGINIA 23237-
1103

NGVA-ZA

15 September 2022

MEMORANDUM FOR RECORD

SUBJECT: Command Policy 22-023 Virginia
National Guard State Tuition Assistance Program
(VANGSTAP)

1. References:

a. Code of Virginia, Section 23.1 1-610, Members
of the National Guard, grants

b. Virginia Debt Collection Act, Code of Virginia,
Sections 2.2-4800 - 2.2-4809

c. Virginia Department of Accounts
Commonwealth Accounting Policies and Procedures
Manual, Section 20500, Topic 20505, Accounts
Receivable

d. AR 135-91 (Service Obligations, Method of
Fulfillment, Participation Requirements, and
Enforcement Procedures)

e. ANGI 36-2001 (Management of Training and
Operational Support within the Air National Guard)

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2. Purpose. This Command Policy implements policy and procedural guidance for the Virginia National Guard State Tuition Assistance Grant (STAG).

3. Applicability. This Command Policy applies to all eligible Traditional and Title 32 and Title 10 Active Guard and Reserve SMs of the Virginia Army and Air National Guard.

4. Objectives.

a. To attract and retain quality SMs in the Virginia National Guard.

b. To improve the education level of SMs in the Virginia National Guard.

c. To enhance the morale, performance, and professionalism of SMs in the Virginia National Guard.

5. Terms.

a. Distance Learning (DL): Courses which do not convene in person at an educational facility. DL as a means of instruction, not limited to courses facilitated via Internet, video teleconference, or self-study.

b. Federal Tuition Assistance (FTA): A Federally funded tuition assistance program that is used by all military branches.

c. Satisfactory participation/performance, as defined by AR 135-91 and ANGI 36-201:

(1) Attending and satisfactorily completing all scheduled IDT periods, unless excused by the SM's unit commander.

(2) Attending and satisfactorily completing the entire period of annual training, unless excused by the SM's unit commander.

(3) Maintaining a neat military appearance and performing assigned duties in a satisfactory manner, as determined by the SM's unit commander.

d. School: A not-for-profit institution for higher education accredited by the State Council of Higher Education for Virginia, to include vocational/technical institutes, community colleges, universities, etc.

e. Semester: A segment of the academic calendar of a school, usually 15-18 weeks in duration (shorter in the summer). Most schools conduct three semesters- fall, spring, and summer.

f. State Tuition Assistance Advisory Council (STAAC): Chaired by the Department of Military Affairs (DMA); members of the Virginia Army and Air National Guard from the G1/A1, R&R, and State Education Office.

g. STAG: A conditional grant awarded to an eligible Virginia National Guard SM to reimburse a portion of tuition cost for the awarded semester. An awarded STAG may be recouped should the SM fail to fulfill their continued service obligation and other requirements, such as satisfactory participation/performance.

h. Unit Commander: The lowest level of command with administrative authority and responsibility (e.g., Company, Flight).

6. Policy. Policy for administering the VANGSTAP is based on statutory language in the Code of Virginia,

23.1-610. VANGSTAP rules and requirements are herein established for a fair, equitable, and lawful administration of the program within the funding and other statutory constraints.

7. Eligibility.

a. A Virginia National Guard SM is eligible to receive a STAG if they:

(1) Have completed Basic Combat Training, Basic Military Training, or ROTC Advanced Camp.

(2) Will have no less than two years remaining on their Virginia National Guard contract following completion of the semester for which the STAG was awarded.

(3) Are a satisfactory participant in the Virginia National Guard throughout the semester for which the STAG was awarded.

(4) Are not administratively flagged for any reason.

(5) Newly enlisted out of state recruits attending residential courses at a Virginia school are eligible for a STAG. Eligible recruits must be fully assessed into the Virginia National Guard at the time of application. Recruits must understand that in-state tuition rates are not guaranteed; each school applies its own policies regarding in-state tuition rates.

(6) Are enrolled at an accredited not-for-profit school with a physical location in Virginia, including SMs enrolled in a DL program/courses offered by that school. Special courses within a Virginia school's curriculum, such as study abroad or those occurring

outside of Virginia, will be addressed on a case-by-case basis by the State Education Office.

(a) SMs currently awarded a STAG for an out-of-state DL program may continue receiving the STAG through June 30, 2026.

(b) Courses offered by public vocation or technical schools listed on the Approved School Listing. For an updated listing of approved vocation or technical schools, contact the Education Services Office.

(c) In accordance with the Constitution of Virginia, Article I., Section 16, theological degrees are ineligible for STAG award (e.g., seminary school).

b. Approval waivers for SMs with less than two years remaining on their service obligation must be submitted to the Education Services Office and include a memo from the SM's unit commander providing the reason for which the SM is unable to re-enlist and acknowledging a continued service obligation.

c. Are meeting the following satisfactory academic progress requirements:

(1) Remain in good standing within the school's academic standards.

(2) Maintain no less than a 2.0 cumulative grade point average for undergraduate level courses. Maintain no less than a 3.0 cumulative grade point average for graduate level courses.

(3) Obtain a passing grade in each course within the semester for which the STAG was awarded

(e.g., course grade is not listed as failed, incomplete, or withdrawn).

d. Schools may be added to the approved list at any time by the VANGSTAP Program Manager (PM).

8. Benefits.

a. The VANGSTAP cap for each program year will be determined by the Adjutant General, subject to the level of funding provided by the General Assembly of Virginia and Section 23.1-610 of the Code of Virginia.

b. The STAG amount awarded to SMs will not exceed the established VANGSTAP cap per semester or the total cost of tuition.

c. STAG may be used to complete one degree at each level of study, regardless of whether the first degree was obtained using STAG. This includes an associate degree, bachelor's degree, graduate degree (master's, doctorate), and licensure/certification as determined by the State Education Office. Vocational courses are not limited by number of credits or degree completion requirements (e.g., welding certification) but the STAG amount will be determined by the State Education Office.

d. SMs are encouraged to apply for all available forms of federal benefits and Veterans Affairs entitlements prior to applying for state assistance. These programs include FTA and the GI Bill. STAG can be used to pay tuition costs not covered by Federal benefits up to the lesser of either the VANGSTAP cap or the remaining tuition cost balance.

e. STAG funding priorities are as follows:

(1) Enlisted SMs who have previously received assistance through this program, who do not have a degree, and who are currently enrolled in a program to complete their associate degree, bachelor's degree, or certification only.

(2) New enlisted VANGSTAP SMs within their initial or first term contract seeking an undergraduate degree.

(3) VANGSTAP SMs who have not completed their bachelor's degree in order to meet commissioning requirements.

(4) All SMs seeking or continuing an undergraduate degree.

(5) SMs seeking a graduate (master's, doctorate) degree.

(6) Other education programs for any SM of the Virginia National Guard as deemed appropriate by the VANGSTAP PM.

f. Written notification of VANGSTAP participation will be issued to the school upon recipient request in support of in-state tuition rates.

g. Verified STAG will be paid directly to the SM. It is incumbent upon the SM to pay any liabilities incurred for their educational expenses. The Virginia National Guard is not liable for any educational debts.

h. Courses with a final grade listed as failed, incomplete, or withdrawn will not be reimbursed. The repeat of a previously passed course will not be reimbursed. The repeat of a previously failed course is eligible for STAG reimbursement. Special courses

which run longer than a semester will be addressed on a case-by-case basis by the State Education Office.

9. VANGSTAP Process and Responsibilities.

a. SM Responsibilities:

(1) SMs must submit a STAG application via the VANGSTAP website prior to each semester deadline at <https://statetuition.vangweb.com>.

(2) SMs must submit an initial tuition bill/estimate.

(3) SMs must submit final grades and a bursar statement/tuition bill for each semester via the VANGSTP website within 30 days after semester completion. Failure to submit required documents can result in delay of reimbursement or the potential for no reimbursement.

(4) SMs must meet the following satisfactory academic progress requirements:

(a) Remain in good standing within the school's academic standards.

(b) Maintain no less than a cumulative grade point average of 2.0 for undergraduate level courses. Maintain no less than a 3.0 cumulative grade point average for graduate level courses.

(5) As part of this conditional grant, all SMs must agree to a continued service obligation with the Virginia National Guard for a period of two years following the end of the last semester for which a STAG is received, including ROTC and Simultaneous Membership Program participants. This obligation cannot be waived by transfer to the United States Armed Forces or to the National Guard of another

state, even if that transfer is approved by the Virginia National Guard. SMs must agree to repay the Commonwealth of Virginia, on a prorated basis, for any failure to fulfill the two-year continued service obligation to the Virginia National Guard for which a STAG was received. This applies to any separation from service in the Virginia National Guard, whether voluntary or involuntary.

b. Unit Commander Responsibilities:

(1) Ensure all SMs within their organization are aware of this program and application deadlines. Commanders will post scheduled suspense dates on their permanent bulletin board.

(2) Every lowest level of command (e.g., Company, Flight) will appoint an Education Services Advisor to assist SMs with educational programs.

(3) Commanders and retention personnel should remind SMs requesting early separations that recoupment actions will be initiated by the Commonwealth of Virginia if they fail to complete their obligatory period of service in the Virginia National Guard. The approval authority for waivers of the continued service obligation is the Attorney General of Virginia.

(4) Will submit a letter in writing to the VANGSTAP Office indicating the SM's valid reasoning for not being able to re-enlist and acknowledging the service obligation for using a STAG.

c. VANGSTAP PM Responsibilities:

(1) Receive and process all STAG applications.

(2) Review all applications for accuracy and completeness prior to approval.

(3) Maintain a current list of approved schools and costs.

(4) Produce a recommended list of approved and disapproved STAG recipients. For approved SMs, the VANGSTAP PM will include the projected STAG amount to be paid on behalf of each SM.

(5) Serves as the primary liaison with the schools.

(6) Submits written notification of VANGSTAP participation to the school of enrollment upon SM's request in support of in-state tuition rates.

(7) Process all reimbursements to approved STAG recipients and maintain strict accountability of all funds expended. Prepare a quarterly budget report to be reviewed by the Chief Financial Officer.

(8) Maintains documentation, in accordance with state standards, on each SM who receives a STAG.

d. Recoupment Manager Responsibilities:

(1) Notify SMs and commanders in writing of debt obligation.

(2) Submit debt information to the Virginia Accounting and Finance Department for processing.

(3) Review all appeals for recoupment actions and provide recommendations through the DMA to the Office of the Attorney General.

e. STAAC Responsibilities:

(1) Manage overall VANGSTAP.

(2) Prepare all correspondence concerning VANGSTAP and determine application deadlines.

(3) Publish approved funding guidelines and maximum STAG amounts for each year after the legislature has approved funding and after the Adjutant General has approved individual assistance amounts.

f. DMA Fiscal Office Responsibilities:

(1) Coordinate all funding actions and provides the VANGSTAP PM with annual appropriations limits.

(2) Provide oversight and audit of the VANGSTAP and funds.

(3) Collect delinquent debts in accordance with state procedures, to include, but not limited to tax set-offs, letters to debtors, court judgments, and referrals to the Office of the Attorney General.

(4) Disburse funds to eligible recipients.

g. The Adjutant General of Virginia Responsibilities:

(1) Serve as the final authority on the modification of the VANGSTAP for the Virginia National Guard.

(2) Approve changes in grant amounts as recommended by the STAAC.

(3) Publish a signed policy to address any changes pertaining to the VANGSTAP.

10. Recoupment.

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a. STAGs paid to recipients are subject to the recoupment program if the SM fails to meet service obligations and requirements listed in this policy.

b. Once a recoupment action is established, an initial letter of notification will be forwarded to the SM indicating the amount due and reason for the action. Once the initial notification is received, the SM has 30 days to respond to the VANGSTAP PM in order to reconcile the debt. A second notification letter will be mailed after the initial 30 days has expired in order to reconcile any remaining debt. Failure to repay debts within 60 days, or failure to set up a repayment program, will cause the recoupment action to be forwarded to the Fiscal Office at the DMA for collection.

c. SMs may be authorized up to 36 months to satisfy the total debt amount. The repayment options are a one-time payment in full using a personal check, bank check, or money order; or monthly payments of at least \$100 based on the following rates:

(1) Total debt amount of \$1,000 or less will be paid within 12 months.

(2) Total debt amounts of \$1,001 to \$2,400 will be paid within 24 months.

(3) Total debt amount in excess of \$2,400 will be paid in 36 months.

11. Appeals.

a. Appeals Process for a Denied Application.

(1) Appeal requests may be submitted up to 15 days from the date of denial. These will be

reviewed on a case-by-case basis by the State Education Office.

(2) Application denials based upon statutory language are not eligible for appeal.

b. Appeals Process for Recoupments.

(1) Only the personnel in the Office of the Attorney General are permitted to grant authorization for an exception to policy (ETP), for relief from all or a portion of the recoupment amount. ETPs have been granted for situations such as a death in the family forcing the individual to withdraw from school, a serious illness or injury to the SM or immediate family member, medically documented post-traumatic stress disorder or traumatic brain injury, etc. Each ETP is evaluated on a case-by-case basis, and approval is not guaranteed.

(2) SMs requesting an ETP must submit the following documents to: Department of Military Affairs, ATTN: VAFA-Education, P.O. Box 600, Blackstone, Virginia 23284.

(a) A formally written, typed letter or memorandum with a subject line including the SM's name and semester being recouped (e.g., Exception to Policy Request for SGT Smith - Fall 2022). SM should clearly explain the background, timeline, any attempts to correct or address the extenuating circumstances, and any record of communication with the State Education Office.

(b) A memorandum from the SM's unit commander addressing the SM's character, performance, confirmation of the extenuating

circumstances, and the unit commander's recommendation.

(c) Pending a decision on a requested ETP, the SM is still considered liable for the debt and is ineligible for further STAGs. If the Office of the Attorney General approves debt relief for the SM, future applications for STAG will be considered on a case-by-case basis. Recoupment payment checks should be made payable to the Treasurer of Virginia and mailed to Department of Military Affairs, ATTN: VAFA-Education, P.O. Box 600, Blackstone, Virginia 23824.

12. Point of contact for this policy is Don L. Unmussig at (434) 298-6385 or donald.l.unmussiq.nfg@army.mil.

/s/ Timothy P. Williams
TIMOTHY P. WILLIAMS
Major General, VaARNG
The Adjutant General

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COMMONWEALTH of VIRGINIA

MAJOR GENERAL JAMES W. RING
THE ADJUTANT GENERAL

DEPARTMENT OF MILITARY AFFAIRS
OFFICE OF THE ADJUTANT GENERAL
VIRGINIA NATIONAL GUARD

JOINT FORCE HEADQUARTERS
6090 STRATHMORE ROAD
RICHMOND, VIRGINIA 23237-1103

August 29, 2023

Pvt. Trace Stevens
206 Cherwell Court
Williamsburg, Virginia 23188-1800

Dear Pvt. Stevens,

Thank you for your inquiry concerning tuition assistance. I asked my Deputy Chief of Staff, Lt. Col. Brandon Price, to review your concerns.

Lt. Col. Price discovered that during the contracting process your recruiter provided you with information regarding federal and state tuition assistance. He also verified that your prospective university is an active participant in the U.S. Army's Federal Tuition Assistance portal, known as ArmyIgnitED. Lt. Col. Price determined that you are eligible to use Federal Tuition Assistance for your desired degree program following your satisfactory completion of Basic Combat Training and Advanced Individual Training.

Your desired theological degree program is ineligible to receive funds from the State Tuition Assistance Program. The policies governing the State

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Tuition Assistance Program cannot be waived as it is structured and funded as a part of the Virginia state code. Modification of the state code requires legislative action. I encourage you to contact your local elected delegate or state senator should you have questions about modifying state code.

Soldier Care is paramount to the Virginia National Guard. If I may be of further assistance, please do not hesitate to contact my office or Lt. Col. Price at (434) 298-5879.

Sincerely,

James W. Ring

JAMES W. RING

Major General, VaARNG

The Adjutant General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**

Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher Education
for Virginia; **John Jumper**, in
his official capacity as the Chair
of the State Council of Higher
Education for Virginia; **Major
General James W. Ring**, in his
official capacity as The Adjutant
General of Virginia; and **Donald
L. Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

Case No.
**3:25-cv-
00407-RCY**

**Declaration
of Cameron
Johnson in
Support of
Motion for
Preliminary
Injunction**

I, Cameron Johnson, hereby state and declare as follows:

1. I am eighteen years old and make this declaration based on my personal knowledge.

2. I am a 2025 graduate of Wilson Memorial High School in Fishersville, Virginia, just outside of Waynesboro.

3. I also attended the Shenandoah Valley Governor's school part-time and took classes in arts and humanities. The Shenandoah Valley Governor's school offers a unique curriculum for gifted students who excel academically.

4. I am a Christian and my sincere religious beliefs are based on and rooted in the Holy Bible, which I believe to be the supreme, authoritative, true Word of God.

5. I was raised in a Christian home and my parents have modeled for me what it means to put our faith above all else.

6. I believe that every follower of Christ should strive to fulfill the Great Commission (*Matthew* 28:18–20a; *Mark* 16:15) and tell others about the Gospel of Jesus Christ regardless of their occupation, position, location, or other circumstances.

7. I always strive to do that. In fact, I love to tell others about His Gospel.

8. My parents and I attend Wayside Baptist Church, where I am actively involved and frequently volunteer. My service includes assisting with children's ministries, singing in the choir, participating in maintenance and community outreach projects, completing an internship at the church, and working with the welcome team.

9. I always knew that I wanted to go to college after I graduated high school.

10. My mother went to college and she has always encouraged me to pursue a college degree as well.

11. When I was about 15 years old, I felt that God was leading me to eventually, one day, go into ministry.

12. I believe that this may be a calling to become a pastor, but God might also lead me into a regular career where I could minister to other people, like coworkers, clients, and the public.

13. Put another way, I do not yet know whether this means I will end up in a ministry vocation or if I will minister to others in a secular career.

14. Regardless of what job I might have, I want to be a leader. I want to lead others, whether that be from the pulpit, from the executive office, or somewhere else.

15. I am also considering future careers in real estate or running a non-profit.

16. And I plan to add a business minor while in college, in part, to help prepare me for those types of careers.

17. It's hard to predict the future, but I will follow whatever career path God leads me to after college.

18. During my senior year of high school, I applied and was accepted at Liberty University to start classes on campus during the fall 2025 semester.

19. I decided to major in Pastoral Leadership.

20. I picked this major for several reasons. Most importantly, I believe God wanted me to pursue it. If I picked a different major, I would be ignoring God's instruction, which violates my religious beliefs. Picking this major was and is an exercise of my religion.

21. On top of that, I decided to major in Pastoral Leadership because it will develop my leadership skills, it gives me a solid foundation if I decide to further my education in graduate school, and it can help prepare me if I do eventually go into vocational ministry.

22. After I was accepted at Liberty, I learned about Virginia's Tuition Assistance Grant Program ("VTAG").

23. I was excited to hear about the Program because I really want to limit the amount of student loans I will need to take out to go to college.

24. I applied for a Tuition Assistance Grant through Liberty's financial aid office but I was told that I was denied a VTAG award because my major is a "CIP code 39 program" and "[a]ccording to SCHEV regulations, VTAG shall be used for undergraduate work 'other than those leading to religious training or theological education.'" Doc. 1-4 at PageID 63 (VTAG Denial Email) (Exhibit 4 to the Verified Complaint).

25. I was also told there were "no grounds to appeal for this regulation." *Id.*

26. My understanding is that so long as I major in Pastoral Leadership at Liberty, I am categorically ineligible for VTAG because the State Council of Higher Education considers my major as one for "religious training or theological education" and is therefore excluded.

27. I satisfy all other criteria to receive a VTAG award, but for the fact that my major in Pastoral Leadership is ineligible.

28. I plan to major in Pastoral Leadership throughout my time in college.

29. I will owe over \$22,000 for the fall 2025 semester at Liberty, including more than \$12,000 in tuition alone.

30. I expect to owe the same amount (or more) for the spring 2026 semester, and for all future semesters.

31. Because my major is in Pastoral Leadership, I am being denied a \$5,250 grant for the 2025–2026 academic year.

32. If I picked a different (non-CIP Code 39) major, like Mathematics, Philosophy, or History, I would be able to receive a VTAG award for four academic years while in college.

33. As a result, I will be denied \$21,000 (at the current award amount) over the course of my undergraduate career simply because I decided to major in Pastoral Leadership.

34. I have already had to take out extra student loans to cover the negative difference for the fall 2025 semester due to not being able to receive VTAG. And I will have to take out additional student loans for my future semesters because I will not be able to receive VTAG.

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DECLARATION

I, Cameron Johnson, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on June 23, 2025, in Waynesboro, Virginia.

Cameron Johnson
Cameron Johnson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**

Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher Education
for Virginia; **John Jumper**, in
his official capacity as the Chair
of the State Council of Higher
Education for Virginia; **Major
General James W. Ring**, in his
official capacity as The Adjutant
General of Virginia; and **Donald
L. Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

**Case No.
3:25-cv-
00407-RCY**

**Declaration
of Trace
Stevens in
Support of
Motion for
Preliminary
Injunction**

I, Trace Stevens, hereby state and declare as follows:

1. I am twenty years old and make this declaration based on my personal knowledge.
2. I am now a Specialist in the Virginia Army National Guard.

3. I am a Christian and I believe that the Holy Bible is the supreme, authoritative, true Word of God. My religious beliefs are rooted in and based on the Bible.

4. I attend Crosswalk Community Church in Williamsburg. I volunteer on the worship team.

5. I was raised by my mother and step-father in a Christian home. They have set a good example of what it means to live a Christ-centered life.

6. I believe the Bible instructs us (Christians) to disciple others and to always look for opportunities to spread the Gospel of Jesus Christ. I try to do this in every aspect of my life.

7. Simply put, my faith and religion are the most important thing in my life.

8. I graduated from Bruton High School in June 2023.

9. During high school, I originally planned to enlist in the active-duty United States Air Force after graduation.

10. Both my father and step-father are Air Force veterans, and I greatly admire the men and women that sacrifice themselves to serve our great country.

11. But during my senior year, I believe that God wanted me to pursue a college education to help prepare me for a future career in some type of ministry work.

12. So I decided that I should follow God's plan and attend college.

13. I knew college was very expensive and I was concerned about how I would pay for it. I began to look for financial aid options to help me.

14. In the spring of 2023, I met a Virginia Army National Guard recruiter at my high school.

15. I was interested in possibly joining the National Guard given my prior plan to join the Air Force. I thought maybe the National Guard would be a good fit because I could both serve my country and go to college at the same time.

16. When I first met the recruiter, I was planning to do the online ministerial leadership program at Southeastern University, a Christian college in Florida.

17. I told the recruiter about my current plans to major in ministerial leadership at Southeastern and the recruiter told me that the National Guard Grant Program could help me pay for college if I joined the National Guard.

18. The recruiter also told me that the U.S. Army's federal tuition assistance program could also help me pay for college if I enlisted.

19. I ultimately decided to enlist in the Virginia Army National Guard in May 2023, mainly because of the tuition assistance benefits that I expected to receive as a member of the National Guard.

20. A few months later, in August 2023, I received National Guard benefits paperwork and learned, for the first time, that the Virginia National Guard Grant could not be used for "religious studies."

21. The recruiter never told me that the Virginia National Guard Grant could not be used for religious studies.

22. After I learned that “religious studies” were excluded from the grant program, I called the National Guard Grant Program’s administrative office.

23. A Department of Military Affairs employee confirmed to me that I would be ineligible for the National Guard Grant because (1) the grant could not be used for anything related to religion and (2) Southeastern University was not an approved college for the Program because it is an out-of-state school.

24. I then contacted the Governor’s office in August 2023 to see if there was any way for the National Guard to accommodate me and give me the grant, since that was the main reason I enlisted in the National Guard.

25. On September 19, 2023, I received an email from a Legislative and Policy Analyst with the Virginia Department of Military Affairs. That email included an attachment pdf letter from Adjutant General Ring, which was dated August 29, 2023. A true and correct copy of that letter is attached as Exhibit 6 to the Complaint. *See* Doc. 1-6 at PageID 77.

26. General Ring’s letter said that my then-intended program at Southeastern was eligible for “Federal Tuition Assistance” but that it was a “theological degree” and thus “ineligible to receive funds from the State Tuition Assistance Program.” *Id.*

27. I left for basic training the next day and returned in January 2024.

28. I didn't end up enrolling at Southeastern University given the timing of my basic training. When I returned I decided to apply at Liberty University because (1) its tuition was much more affordable because it is an in-state college, and (2) I hoped that I would be able to receive a National Guard Grant while going there.

29. I was accepted at Liberty University to start in the fall 2024 semester.

30. I decided to major in Religion (General Track).

31. I picked this major because I believe God called me to pursue it. As explained above, I believe God wants to use me, at some point in my future, in the ministry field. I believe that if I were to pick a different major, I would be ignoring God's calling for me. Pursuing this college program, to me, is an exercise of my religion.

32. The Religion major will help prepare me if I do eventually go into ministry.

33. Plus, the program will give me the required qualifications to become an officer.

34. My current plan right now is to become an officer and chaplain in the military.

35. Although my primary plan is to be a military chaplain, I am interested in and considering other careers as well.

36. For example, I am also considering going into law enforcement or pursuing a full-time career as a military officer.

37. I'm also interested in perhaps going into aviation after my military service.

38. I will go into whatever career that I believe God leads me to.

39. Because the Department had told me that "theological degrees" and "religious studies" were ineligible for a National Guard Grant, but provided no guidance as to what degree programs qualified as such, in July 2024, I emailed Department staff asking if I would be eligible for a grant while attending Liberty University online.

40. The Department responded that online programs at Liberty University were eligible, reiterated that the National Guard Grant could not be used for "religious degrees," but stated that it "would possibly pay for a particular religious 'required' course for another type of degree to complete a semester." Doc. 1-7 at PageID 79 (Stevens-Gregg July 2024 Emails).

41. At that time, I said I was going to be non-degree seeking but I ultimately decided to major in Religion before the start of the fall 2024 semester.

42. As a result of what the Department told me, I did not apply for a National Guard Grant for the fall 2024 semester.

43. But I decided to apply for a National Guard Grant for the spring 2025 semester, believing that I should be eligible for a grant.

44. Around the same time I applied for the grant, I learned that my major in Religion was an eligible program for the Virginia Tuition Assistance Grant

Program (“VTAG”), a different grant program in the State that offers grants to students at private, nonprofit colleges.

45. I also learned that the Tuition Assistance Program excluded degrees that were for “religious training or theological education,” which is similar language to what is used in the National Guard Grant statute.

46. So I was confused why my Religion major at Liberty University would be eligible for one state grant program, but ineligible for the National Guard Grant Program.

47. In addition, to receive a spring 2025 grant, the Department required me to send them a signed Promissory Note in which I had to agree that the National Guard Grant was not being “used to fund degrees in religious training or theological education.” Doc. 1-8 at PageID 89 (Stevens Registration Package) (emphasis in original).

48. Given the inconsistency between the Tuition Assistance Grant Program and National Guard Grant Program, I decided to email Department staff to get clarity on whether my Religion major would be approved for a National Guard Grant. *See* Doc. 1-9 at PageID 95 (Stevens 2025 Emails).

49. Despite both programs using nearly identical language, the Department told me the National Guard “will not approve reimbursement awards towards religious degrees.” *Id.* at PageID 94.

50. This response didn’t answer my direct question, which was whether my specific major in Religion qualified or not. So I responded that I would

proceed as though I would be approved and I would sign and send the required Promissory Note. *Id.* at PageID 93.

51. After I said this, Defendant Unmussig told me that the Tuition Assistance Grant Program is a different program that the Department “has nothing to do with” and I would not receive a National Guard Grant for the spring 2025 semester because of my major in Religion. *Id.* at 92.

52. My understanding is that the Department considers my major in Religion as a degree for “religious training or theological education” and is thus excluded, even though the state agency that administers VTAG does not consider my major as such a degree.

53. My tuition and fees bill for the spring 2025 semester totaled \$6,270.99.

54. After receiving a military tuition discount from Liberty and \$2,250 if federal U.S. Army tuition assistance, I paid \$2,009.99 out of pocket.

55. But for the National Guard Grant’s religious exclusion, I would receive a reimbursement grant in the amount of \$2,009.99 for my out-of-pocket cost within about 60 days of the end of the spring 2025 semester.

56. I am currently taking summer classes at Liberty. My tuition and fees for the current semester are \$3,000 after receiving a military tuition discount.

57. I cannot receive federal U.S. Army tuition assistance for this semester because I already received the limit of \$4,500 per fiscal year.

58. I must pay the \$3,000 owed out of pocket for this semester.

59. But for the National Guard's religious exclusion, I would receive a reimbursement grant in the amount of \$3,000 for my out-of-pocket cost within about 60 days of the end of the current summer 2025 semester.

60. I will graduate with my B.S. in Religion after this summer semester.

61. I plan to enroll in Liberty's Master of Divinity course, starting the fall 2025 semester.

62. My plan is to get my Master of Divinity and become a chaplain in the military.

63. I know that the National Guard Grant Program can be used for graduate studies, but I will continue to be denied a National Guard Grant while pursuing a Master of Divinity degree because of the National Guard's religious exclusion.

DECLARATION

I, Trace Stevens, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on June 24, 2025, in San Francisco, California.

s/ Trace Stevens
Trace Stevens

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**

Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher Education
for Virginia; **John Jumper**, in
his official capacity as the Chair
of the State Council of Higher
Education for Virginia; **Major
General James W. Ring**, in his
official capacity as The Adjutant
General of Virginia; and **Donald
L. Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

Case No.
**3:25-cv-
00407-RCY**

**Declaration
of Luke
Thomas in
Support of
Motion for
Preliminary
Injunction**

I, Luke Thomas, hereby state and declare as follows:

1. I am eighteen years old and make this declaration based on my personal knowledge.
2. I am a 2025 graduate of Cosby High School in Midlothian, Virginia.

3. While in high school, I participated in Cosby's choral programs, including the men's choir, chamber choir, and spotlight show choir, of which I was one of the two male dance captains. I greatly enjoyed these programs and I have a great passion and love for music.

4. I also am deeply devoted to my faith. I am a Christian and my sincere religious beliefs are based on and rooted in the Holy Bible, which I believe is the supreme, authoritative, true Word of God.

5. My parents raised me to always prioritize my faith and to always seek God's direction in my life. I have always strived to do that.

6. We attend The Chapel church in Midlothian, where I volunteer as a greeter and on the worship (music) team. I especially love being on the music team where I can combine my passion for music with my faith.

7. I believe that every follower of Christ—regardless of occupation, position, location, or other circumstances—is compelled by the Bible to tell others about the Gospel of Jesus Christ.

8. I strive to do this in my life and I will always look for ways to share the Bible and my beliefs with others.

9. While in high school, I didn't originally plan on going to college. Instead, I thought I would enter a trade or start a small business in landscaping or pressure washing, jobs that I did during the summer while in high school.

10. But during my junior year, I learned that there were college music programs that incorporated the Christian faith. These programs drew my interest in maybe going to college.

11. Around the same time, I also felt that God was leading me to use my musical skills, at some point in my future, in the ministry field, perhaps as a worship pastor or director.

12. So I decided that I should go to college and major in a program where I could combine and pursue both my love for music and my religion.

13. I learned that Liberty University had a major in “Music and Worship” and I believed this was the perfect degree for me. It is a combination of both music and religious instruction that will prepare me for either a religious or secular music career.

14. That degree includes music courses such as “Musicianship,” “Harmonic Practices and Theory,” and “Celebration Choir,” for example. It also has courses such as “Introduction to Biblical Worldview” and “Creative Worship.” *Music & Worship (B.S.) – Resident*, Liberty Univ., <http://bit.ly/44lFr8A> (last visited June 23, 2025).

15. I believe that God wanted me to pursue this major in college.

16. I believe that if I were to major in anything else, I would be ignoring God’s instruction, which is a direct violation of my Christian beliefs. For me, selecting this major is an exercise of my religion.

17. I was accepted at Liberty to start classes in the upcoming fall 2025 semester.

18. After I was accepted, I learned that the Music and Worship major at Liberty is ineligible for Virginia's Tuition Assistance Grant Program because it is classified as a "CIP Code 39" program and is therefore automatically ineligible.

19. I was discouraged and disappointed to learn this because I thought the VTAG Program was open to any student living in Virginia that was attending a private, nonprofit university.

20. I am currently an undeclared major, but I will declare my major in Music and Worship before October 20, 2025, which is before class registration for the spring 2026 semester opens.

21. I will declare my major before that date to ensure that I will be able to register for and take the required courses needed for the Music and Worship program during the spring 2026 semester and for future semesters.

22. Once I declare my major, I will remain a Music and Worship major until I graduate with a B.S. in Music and Worship from Liberty.

23. I understand that as a Music and Worship major, I will be excluded from the VTAG Program for the spring 2026 semester, and for all of my future college semesters.

24. Based on the current VTAG award amount, this means I will be denied over \$18,000 in Tuition Assistance Grants that I would otherwise receive if I picked a different, "eligible" major.

25. Although I will major in Music and Worship and believe that I might, one day, be a worship pastor

or director, I am still considering careers other than those strictly in vocational ministry.

26. For example, I really want to work in the music industry, and I am very interested in being a singer or songwriter.

27. This might lead me to a worship role, or it might lead me to a more “traditional” music career in a place like Nashville, for instance.

28. I also would like to open my own business one day regardless of what other jobs I might have.

29. I do not yet know whether God will lead me into vocational ministry after college, or whether I will pursue commercial music or some other secular career where I can still share the Gospel with others.

30. No matter what, I will pursue whatever career that God calls me to.

DECLARATION

I, Luke Thomas, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on June 23, 2025, in Midlothian, Virginia.

s/Luke Thomas
Luke Thomas

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**

Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher
Education for Virginia; **John
Jumper**, in his official capacity
as the Chair of the State Council
of Higher Education for Virginia;
**Major General James W.
Ring**, in his official capacity as
The Adjutant General of
Virginia; and **Donald L.
Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

**Case No. 3:25-
cv-00407-RCY**

**Supplemental
Declaration
of Trace
Stevens in
Support of
Motion for
Preliminary
Injunction**

I, Trace Stevens, hereby state and declare as follows:

1. I am twenty years old and make this declaration based on my personal knowledge.

2. I am updating the Court on events that happened since I filed my first declaration on June 27, 2025.

3. When I made my first declaration, I was finishing the final semester of my undergraduate degree. I completed the semester and graduated with a B.S. in Religion in August 2025.

4. Although I applied for it, I was denied a National Guard Grant for the final semester (summer 2025) of my undergraduate degree as explained in my first declaration.

5. Because I didn't receive a grant, I had to cover the tuition cost for the semester out of my own money. I signed up for a payment plan with Liberty to pay off that balance.

6. I also previously said that I planned to enroll in Liberty's Master of Divinity program for the fall 2025 semester. *See* ECF 23-5 ¶ 61.

7. I initially enrolled in the Master of Divinity program and signed up for two 8-week classes during the first term of the fall 2025 semester.

8. However, at the start of the semester I encountered several difficulties in my personal life, including financial difficulties. In fact, I missed a payment on my payment plan to pay off the balance from my final undergraduate semester.

9. Had I received a National Guard Grant for my final undergraduate semester, I would not have had a remaining balance and thus would not have had to enter a payment plan.

10. Given all of this, I took the rest of the fall 2025 semester off so that I could work full-time to pay my balance and so I could start anew in the spring 2026 semester, which starts in January 2026.

11. I'm currently working as a full-time substitute special education teacher with the York County Schools.

12. I am working toward paying off my balance owed to Liberty and saving money for the spring 2026 semester.

13. I plan to pay my balance off before the start of the spring 2026 semester and re-enroll in Liberty's Master of Divinity program for the spring 2026 semester.

14. If, for unforeseen reasons, I'm unable to pay my current balance before the start of the spring 2026 semester, I will enroll in the Master of Divinity program in the next semester after I pay my balance off.

15. If I receive a National Guard Grant for my prior semesters, I can use that money towards my current balance owed.

16. I am still in the Virginia Army National Guard.

17. As previously explained, I'm excluded from a National Guard Grant while pursuing a Master of Divinity degree because of the National Guard's religious exclusion.

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DECLARATION

I, Trace Stevens, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on November 20, 2025, in Williamsburg, Virginia.

s/ Trace Stevens
Trace Stevens

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

**Cameron Johnson; Luke
Thomas; and Trace Stevens,**

Plaintiffs,

v.

A. Scott Fleming, in his official
capacity as the Director of the
State Council of Higher
Education for Virginia; **John
Jumper**, in his official capacity
as the Chair of the State Council
of Higher Education for Virginia;
**Major General James W.
Ring**, in his official capacity as
The Adjutant General of
Virginia; and **Donald L.
Unmussig**, in his official
capacity as the Chief Financial
Officer of the Virginia
Department of Military Affairs,
Defendants.

**Case No. 3:25-
cv-00407-RCY**

**Supplemental
Declaration
of Luke
Thomas in
Support of
Motion for
Preliminary
Injunction**

I, Luke Thomas, hereby state and declare as follows:

1. I am eighteen years old and make this declaration based on my personal knowledge.

2. I make this declaration to update the Court on events that happened since I filed my first declaration in this case on June 27, 2025.

3. In my first declaration, I said that I planned to declare a major in Liberty's Music and Worship program before October 20, 2025, so that I could register for necessary classes before the start of the spring 2026 semester.

4. I am still planning to declare as a Music and Worship major. I am contemplating a few different concentrations within that major.

5. I hoped that there would have been a decision in this case on my request for a preliminary injunction, allowing me to receive a Tuition Assistance Grant (VTAG) award.

6. But there wasn't. Because of this uncertainty, I talked to my academic advisor who recommended that I declare as a Music Vocal major for the spring 2026 semester so that I could enroll in my primary instrument and secondary instrument classes while we waited for further clarity on the VTAG issue.

7. Every student pursuing a music-related major at Liberty must take both primary instrument and secondary instrument courses, but I was not allowed to register for those classes unless I declared as some type of music major.

8. So I declared as a Music Vocal major for the spring 2026 semester, but I still fully intend to change my major to Music and Worship.

9. The VTAG religious exclusion is impacting my decision to pick my desired major because once I pick Music and Worship, I will lose VTAG.

10. If this Court were to grant my request for a preliminary injunction allowing me to receive VTAG, I would then change my major to Music and Worship.

11. The financial impact of not getting the VTAG award is greatly affecting my already difficult decisions.

DECLARATION

I, Luke Thomas, a citizen of the United States and a resident of Virginia, declare under penalty of perjury under 28 U.S.C. § 1746 that the above is true and correct to the best of my knowledge.

Executed on November 20, 2025, in Lynchburg, Virginia.

s/ Luke Thomas
Luke Thomas