

**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

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

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 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/4iMIVX1> (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 non-profit 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 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.

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.

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 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.

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.

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/3Yq0qE0> (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

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** 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.


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.

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.

A handwritten signature in black ink, appearing to read 'Trace Stevens', written over a horizontal line.

Trace Stevens