

No. 21-418

IN THE
Supreme Court of the United States

JOSEPH A. KENNEDY,
Petitioner,

v.

BREMERTON SCHOOL DISTRICT,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF MEMBERS OF
THE U.S. HOUSE OF REPRESENTATIVES AS
AMICI CURIAE SUPPORTING RESPONDENT**

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STATEMENT OF INTERESTS OF *AMICI*¹

Amici are members of the United States House of Representatives. Their constituents include people who have diverse religious beliefs and many people without any religious belief. *Amici* are bound by their oath and their conscience to represent all these constituents, and as such have an interest in seeing public schools fulfill their long-standing societal role of fostering unity and cohesion among young citizens. Fulfilling this societal role requires that students from all religious and non-religious backgrounds feel welcome at school and feel free from coercion to engage in religious activity against their will. *Amici* thus have an interest in keeping public schools free of any activity that students may perceive as the schools' sponsoring religious belief. *Amici's* interest aligns with this Court's long-standing precedents regarding religious activity in public schools, which have struck an appropriate balance that recognizes an individual's right to engage in private, personal religious activity in public schools, while avoiding any sponsorship—or even perceived sponsorship—by public schools of religious activity.

A complete list of *amici* is provided in the Appendix to this Brief.

¹ No person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. No counsel to a party authored this brief in whole or in part. Petitioner and Respondent have filed blanket consents to the filing of *amicus* briefs, as reflected in letters filed with the Clerk of Court.

INTRODUCTION

“The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind.” *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 226 (1963). This tradition informs *amici*’s work as legislators, in which they adhere firmly to the principle that “it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard.” *Ibid.* The exhortation not to aid, oppose, advance, or retard religious belief requires special vigilance in public schools, because students are particularly susceptible to both coercion and marginalization. This vigilance requires that public school officials avoid even the perception of favoring religious activity, lest a student feel compelled to participate in religious activity that contravenes the student’s own faith, or lack thereof; or as James Madison wrote with regard to religious belief, “we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.” J. Madison, Memorial and Remonstrance against Religious Assessments (June 20, 1785) *available* at <https://founders.archives.gov/documents/Madison/01-08-02-0163> (hereinafter “Remonstrance”). For students, the perception that their public school is endorsing religious activity poses a grave risk of coercion or a sense of diminution and marginalization.

A public school’s perceived sponsorship of religious activity also risks undermining the critical unifying role that public schools play in a pluralistic society that includes individuals with myriad religious beliefs and backgrounds. *Amici* have witnessed the extreme and violent events that can flow from polarization in

society. *Amici's* witness of such events affirms their belief that public schools must maintain and advance their role in establishing societal unity and cohesion through the inclusion of all students, whatever their background or belief. Students who do not share the religious belief that their school appears to be sponsoring are far less likely to view the school as an institution that serves them. Instead, those students are likely to see the school as serving a particular group. Such a perception leads to division and undermines the public school's integrating function. History is fraught with examples of members of a favored dominant religion, including teachers and other state officials, feeling emboldened to establish their primacy in public institutions and even persecute dissenting minorities.

SUMMARY OF ARGUMENT

Protecting students' Establishment Clause rights to freedom from state-sponsored religious coercion and endorsement requires that their public schools remain neutral in matters of religion. Because students are particularly susceptible to official coercion and messages of endorsement, this neutrality must exist in fact, and schools must avoid even the perception of sponsoring religion. Moreover, historical incidents of strife between religious groups in this country, including strife in or related to public schools, underscore the need for schools to remain scrupulously neutral in matters of religion. This Court's own precedents have long recognized the special obligation of public schools to exhibit neutrality in matters of religion.

Public schools' neutrality in matters of religion serves an additional purpose; it advances schools' role as a unifying societal institution by fostering the

inclusion of students from diverse religious and non-religious backgrounds. School sporting events are vital to achieving unity and harmony at school. They build community by bringing all members of the community together. Overt prayer by school officials with students at such events threatens to destroy such events' unifying purpose.

ARGUMENT

I. Freedom from religious coercion requires that public schools remain neutral in matters of religion.

The Establishment Clause requires government neutrality in matters of religion. James Madison, the chief author of the First Amendment, maintained that religious belief requires individual choice, free from any force or coercion. *See generally* Remonstrance. And in this Court's words, "religious beliefs and . . . expression are too precious to be either proscribed or prescribed by the State." *Lee v. Weisman*, 505 U.S. 577, 589 (1992). Thomas Jefferson warned that government sponsorship of religion "tends . . . to corrupt the principles of that very religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it." T. Jefferson, A Bill for Establishing Religious Freedom (June 18, 1779) *available at* <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082>. In addition, official "endorsement sends a message to nonadherents that they are outsiders, not full members of the political community." *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). These concerns are heightened in the public school context because of public schools' integral role in American society and students' particular vulnerability to coercion and

messages of official endorsement for dominant religious views.

A. Students in a school setting are especially vulnerable to majority religious coercion and messages of official endorsement.

Students face immense pressure to conform to their school communities' norms, especially any norms that authority figures at the schools set forth. J. Burger, Conformity and Obedience, *in* Noba Textbook Series: Psychology (R. Biswas-Diener & E. Diener eds. 2022) *available at* <http://noba.to/hkray8fs>. (“[T]eenagers are more prone to conforming than are adults, and . . . people conform significantly less often when they believe the confederates will not hear their responses.”). “The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987).

School coaches specifically have outsized authority relative to their adult peers in the school community: students “give more weight to the authority of the athletic setting than of the academic setting” and are less likely to verbally question or complain about punishment in an athletic setting. K. Niccum, Professors and Coaches: Who Has More Authority?, The University of North Carolina at Pembroke (2010) *available at* <https://libres.uncg.edu/ir/uncp/listing.aspx?id=3112>. Millions of teenagers across the country participate in high school sports each school year, and years later, many report barely remembering their teachers, yet still remain connected to their coaches in a profound way. Linda Flanagan, How Effective

Sports Coaches Help Students Feel Understood at School, KQED (Jan. 28, 2019) *available at* <https://www.kqed.org/mindshift/52828/how-effective-sports-coaches-help-students-feel-understood-at-school>.

B. Public schools are an arm of the State, and history shows us that any state preference towards one religion, to the exclusion of others, creates intolerance, ostracism, and harassment.

It is a “historical fact that governmentally established religions and religious persecutions go hand in hand.” *Engel v. Vitale*, 370 U.S. 421, 432 (1962).

“With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews.”

Everson v. Board of Ed. Of Ewing, 330 U.S. 1, 9 (1947).

The astonishing achievement of the Founders was to rebel against countries of theocracy, holy crusaders, inquisitions, witchcraft trials, and wars of religion between Catholics and Protestants, and then to separate Church and State in our First Amendment. Litigation against official religious imposition on students has been central terrain for making progress for freedom of religion and conscious.

Students who have opted out of religious exercise led by their teachers, principals, and coaches have often been ostracized, bullied, and harassed. And, in many cases, the victims were themselves religious. When

school authority figures initiate or take part in religious activity on school time, students can feel afraid to voice their concerns for fear of retaliation.

In *Santa Fe Independent School District v. Doe*, 530 U.S. 290, 294 (2000), the district court permitted the Mormon and Catholic plaintiffs to litigate anonymously to protect them from intimidation and harassment because they dared to challenge the school's unconstitutional decision to deliver Southern Baptist prayers prior to football games. Maintaining plaintiffs' anonymity was necessary because "many [Santa Fe Independent School District ("SFISD")] officials apparently neither agreed with nor particularly respected" the court's decision. *Doe v. Santa Fe Independent School Dist.*, 168 F.3d 806, 809, n. 1 (5th Cir. 1999), *aff'd*, 530 U.S. 290 (2000). Because "SFISD administrators, teachers, and other employees 'overtly or covertly [attempted] to ferret out the identities of the Plaintiffs . . . by means of bogus petitions, questionnaires, individual interrogation, or downright 'snooping,'" the district court felt the need to threaten "THE HARSHTEST POSSIBLE CONTEMPT SANCTIONS" and/or "CRIMINAL LIABILITY" (emphasis in original) [on the SFISD officials] if they did not cease their investigations." *Ibid.* (citations omitted).

In *Lee v. Weisman*, 505 U.S. at 607, n. 10 (1992) (Blackmun, J., concurring), Justice Blackmun quoted an American Civil Liberties Union ("ACLU") official who stated:

"[o]f all the issues the ACLU takes on—reproductive rights, discrimination, jail and prison conditions, abuse of kids in the public schools, police brutality, to name a few—by far the most volatile issue is that of school prayer. Aside from our efforts to abolish the

death penalty, it is the only issue that elicits death threats.”

The Herdahls, five Lutheran children, were called atheists and devil-worshippers, *including by teachers in front of their classes*, when they abstained from Southern Baptist prayers at their public schools. N. Strossen, Lisa Herdahl and Religious Liberty, 46 Clev. St. L. Rev. 289, 291 (1998). Their mother, Lisa Herdahl, brought suit in the Northern District of Mississippi in 1995 after their school district failed to stop the prayers or the harassment. *Ibid.*; *see also Herdahl v. Pontotoc Cty. School Dist.*, 933 F. Supp. 582, 600 (N.D. Miss. 1996) (permanently enjoining any teacher from “encourag[ing],” “endors[ing],” or inviting classroom prayer in any manner). Although the Herdahls ultimately succeeded in their lawsuit, it came at a great price. During the pendency of the litigation, the Herdahls received numerous bomb threats and death threats. Strossen, *supra*, at 291–292. Ms. Herdahl lost her job and has been called “unemployable in the entire State of Mississippi.” *Ibid.* After endless harassment, the family was forced to move to an undisclosed location. *Ibid.* Years later, Ms. Herdahl still constantly feared for her children’s safety. *Ibid.*

Christian mother Joann Bell’s home was burned to the ground after she voiced concerns about student prayer meetings held before class at her children’s public schools in Little Axe, Oklahoma. C. Scott, Prayer Ruling Unlikely to Resolve Hard Feelings, United Press International (Dec. 12, 1982) *available at* <https://www.upi.com/Archives/1982/12/12/Prayer-ruling-unlikely-to-resolve-hard-feelings/4883408517200/>. The damage was not merely confined to property damage; Bell was also physically assaulted on school grounds. *Ibid.* Bell and her co-plaintiff Lucille McCord, who had

two children in Little Axe public schools, brought suit arguing the schools violated the Establishment Clause by sponsoring organized student prayer meetings. *Bell v. Little Axe Independent School Dist. No. 70*, 766 F.2d 1391 (10th Cir. 1985). The Tenth Circuit agreed with them, but this success came at a significant price. *Ibid.* Due to the constant harassment and threats, the Bells and McCords were forced to move their families to another school district. Scott, *supra*.

These cases are in no way isolated. Even short of an established religion, disputes over religious exercise in the public schools have even led to widespread violence, pitting religious groups against each other. In incidents referred to as the Philadelphia Bible Riots, in May and July 1844, Philadelphia endured violent, deadly riots stemming from a dispute involving religious activity in public schools. Z. Schrag, Nativist Riots of 1844, Encyclopedia of Greater Philadelphia, Rutgers University (2013) *available at* <https://philadelphiaencyclopedia.org/archive/nativist-riots-of-1844/>. Catholic bishop John Hughes's request set off the riots: he asked that Catholic children not be forced to read from the King James Bible or sing Protestant hymns. *Ibid.* He had not asked for any diminution of the rights of any Protestant children nor sought to stop them from reading the King James Bible in school, just that any Bible readings be made "in accordance with the religious beliefs of [the children's] parents and families." A. Beyer-Purvis, The Philadelphia Bible Riots of 1844: Contest Over the Rights of Citizens, 83 Pa. History: J. of Mid-Atlantic Studies No. 3 366, 385 (2016) *available at* <https://doi.org/10.5325/pennhistory.83.3.0366>. The Protestant majority nonetheless viewed this request as a threat to their religious exercise. Schrag, *supra*. The American Republican Association (the "ARA"), a Protestant

nativist group, rallied thousands to protest on May 3, 1844 in a predominantly Irish Catholic section of Kensington, Philadelphia. Beyer-Purvis, *supra*, at 381. After several “outwardly aggressive” anti-Catholic speeches, Catholic residents of the neighborhood rushed the makeshift stage and demolished it. *Ibid.* A second, larger rally was held days later; a fight broke out, nativists attacked the homes of notable Irish Catholic leaders, and both sides opened gunfire upon the other, resulting in the death of a nativist marcher. *Id.*, at 381–83. The *Native American*, a Protestant nativist publication, declared that:

“another St. Bartholomew’s day is begun in the streets of Philadelphia. The bloody hand of the Pope has stretched itself forth to our destruction. We now call on our fellow-citizens, who regard free institutions, whether they be native or adopted, to arm. Our liberties are now fought for;—let us not be slack in our preparations.”

Id., at 383 (quoting *Native American*, May 7, 1844, in R. Billington, *The Protestant Crusade, 1800–1860*, 255 (1938)). Following the publication, nativist rioters burned more than thirty Irish homes, an Irish fire-fighting company building, and two Catholic churches. *Ibid.* The galvanized crowd pelted militia that had been called by Kensington’s sheriff with stones, bricks, and bottles. Schrag, *supra*. Both Catholics and Protestants armed themselves with guns, rifles, and cannons. *Ibid.* Ultimately, fighting during the riots killed more than fifty people and wounded more than one hundred and forty. *Ibid.*

The Founders recognized that such conflict is almost inevitable when the State injects itself into matters of religion; as Madison stated, “[r]eligion &

[g]ov[ernment] will both exist in greater purity, the less they are mixed together.” J. Madison, Letter from James Madison to Edward Livingston (July 10, 1822) *available at* <https://founders.archives.gov/documents/Madison/04-02-02-0471>. They feared that government involvement in religion “w[ould] destroy . . . moderation and harmony” (Remonstrance, ¶ 11) and thus adopted the Establishment Clause as a “high and impregnable” “wall between Church and State.” *Illinois ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign Cty.*, 333 U.S. 203, 212 (1948) (citing *Everson*, 330 U.S. 1). Our country’s history of religious turmoil and violence, both past and present, indicates that the wall must remain “high and impregnable.” *McCollum*, 333 U.S., at 212.

C. This Court’s precedents have always recognized the heightened need for religious neutrality in public schools.

This Court has long recognized that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,” and that “prayer exercises in public schools carry a particular risk” of violating students’ rights under the Establishment Clause. *Weisman*, 505 U.S., at 592; *see, e.g., Aguillard*, 482 U.S., at 583–84. These coercive pressures extend to extracurricular activities, particularly ones like football games, which are integral to the high school experience. Many students feel “immense social pressure, or truly genuine desire, . . . to be involved in the extracurricular event that is American high school football.” *Santa Fe*, 530 U.S., at 292. In light of this pressure, this Court’s decades of precedent recognize that schools must remain neutral as to religion,

including by prohibiting actions that create the appearance that the State sponsors or favors religion.

II. Maintaining public schools' unifying societal role requires avoiding overt religious worship and expression by school officials with students on school time that students could reasonably view as favoring or endorsing any particular religious belief.

Democracy depends on the education of its citizens. Thomas Jefferson wrote to James Madison in 1787, “[a]bove all things I hope the education of the common people will be attended to; convinced that on their good sense we may rely with the most security for the preservation of a due degree of liberty.” T. Jefferson, Letter to James Madison from Thomas Jefferson (Dec. 20, 1787) *available at* <https://founders.archives.gov/documents/Madison/01-10-02-0210>. Public school has long been the central institution for the advancement of civic understanding. Former Illinois Governor and United Nations’ Ambassador Adlai Stevenson once said “[t]he free common school system is the most American thing about America.” D. Tyack, *Seeking Common Ground: Public Schools in a Diverse Society* 1 (2003).

A. Public schools and their sporting events serve a critical unifying function in a diverse and pluralistic society.

The Founders rightly feared that even the perception of governmental religious favoritism creates discord. “They knew the anguish, hardship and bitter strife that could come when zealous religious groups struggled with one another to obtain the Government’s stamp of approval.” *Engel*, 370 U.S., at 429. With that in mind, American public schools were “[d]esigned to

serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people.” *McColum*, 333 U.S., at 216 (Frankfurter, J., concurring); see also *Board of Ed., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982) (“[P]ublic schools are vitally important in the preparation of individuals for participation as citizens, and as vehicles for inculcating fundamental values necessary to the maintenance of a democratic political system.”) (internal quotation marks omitted).

Bremerton, Washington’s public schools embody this civic educational purpose and bring together its diverse population. Kitsap County, where Bremerton is located, is home to people of myriad religious beliefs and non-belief. See Kitsap County Membership Report, Assn. Religion Data Archives (2010) available at <https://www.thearda.com/rcms2010/rcms2010.asp?U=53035&T=county&Y=2010&S=Name>. Its residents are evangelical and mainline Protestants, Catholic, Jewish, Hindu, Buddhist, Baha’i, and nonreligious, among others. *Ibid.* Ninety-one percent of students in the county attend public schools. American Community Survey, S1401 School Enrollment, United States Census Bureau (2019) available at <https://data.census.gov/cedsci/table?q=public%20schools&g=0500000US53035&tid=ACSST1Y2019.S1401>.

Public school sporting events promote not only individual fitness, but the schools’ mission of bringing together the diverse communities that makeup the school. “High school home football games are traditional gatherings of a school community; they bring together students and faculty as well as friends and family from years present and past to root for a common cause.” *Santa Fe*, 530 U.S., at 312. Indeed, the United States Census Bureau found that in 2018,

forty-two percent of school-aged children were involved in sports. Press Release, United States Census Bureau, School Engagement Higher for Children Involved in Extracurricular Activities (Nov. 6, 2018) *available at* <https://www.census.gov/newsroom/press-releases/2018/childs-day.html>. Bremerton High School’s football games consistently garner thousands of views. About, YouTubeBlue BHS, YouTube *available at* <https://www.youtube.com/channel/UCberAvEcCUjlvv41F57Vg4Q/about> (showing 14,226 total views for videos posted by the official YouTube channel of the Bremerton High School Knights) (last accessed March 30, 2022).

Public schools are a central means for fostering social cohesion in our heterogeneous society. Bremerton School District correctly decided that Coach Kennedy’s mid-field prayer—that he insisted students must be allowed to participate in and that some students did participate in—would create a divisive school environment for students and others.

B. Any act on school time that students plausibly see as their school endorsing religious prayer undermines the school’s function in unifying young citizens from diverse backgrounds.

Because “the public school is . . . the symbol of our democracy and the most pervasive means for promoting our common destiny[,] [i]n no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart.” *McCollum*, 333 U.S., at 231 (Frankfurter, J., concurring). Thus, public schools were “organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and

lofty neutrality as to religion.” *Everson*, 330 U.S., at 23–24 (Jackson, J., dissenting).

“It is implicit in the history and character of American public education that the public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort—an atmosphere in which children may assimilate a heritage common to all American groups and religions.”

Schempp, 374 U.S., at 241–42 (Brennan, J., concurring).

With the understanding that “in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce,” this Court has consistently invalidated activity that would lead to the perception that a public school favored or endorsed religion. *Weisman*, 505 U.S., at 578; *see also Santa Fe*, 530 U.S. 290 (prayer prior to football games); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (moment-of-silence statute “for meditation or voluntary prayer”); *Stone v. Graham*, 449 U.S. 39 (1980) (posting of the ten commandments in public school classrooms); *Schempp*, 374 U.S. 203 (statutes requiring recitation of Bible verses and Lord's Prayer); *Engel*, 370 U.S. 421 (state-composed prayer for recitation in public school classrooms); *McCullum*, 333 U.S. 203 (released time program for on-campus religious instruction); *Aguillard*, 482 U.S. 578 (statute mandating creationism be taught alongside evolution). Failure to do so would undermine public schools’ purpose in promoting societal cohesion.

The Legislative Branch too has reinforced the wall of separation between Church and State, particularly

in the school context. Although proponents of school prayer have proposed hundreds of constitutional amendments to promote prayer in public schools, none have succeeded. Congressional Research Service, *School Prayer: The Congressional Response, 1962–1998* (1998). In fact, only four such proposals have ever made it to a vote. *Ibid.* The consistent failure to pass such an amendment reflects the implicit understanding that the State, particularly in public schools, must stay neutral as to religion if we are to maintain the integrative function of schools in our pluralistic democracy.

C. The relief Kennedy seeks would compel schools to allow teachers and coaches to pray with students while on duty at school events and would thus undermine Bremerton public schools’ unifying role in the community.

Granting relief to Kennedy against Bremerton public schools would shatter the neutrality this Court has fought to maintain.

Kennedy’s overtly religious prayers with students have created discord in the Bremerton community. After Kennedy posted on Facebook that “I think I just might have been fired for praying,” the school district was “flooded with thousands of emails, letters, and phone calls from around the country’ regarding the conflict over Kennedy’s prayer, ‘many of which were hateful or threatening.’” *Kennedy v. Bremerton School Dist.*, 991 F.3d 1004, 1011 (9th Cir. 2021), *cert. granted*, 142 S. Ct. 857 (2022); JA 351. Further, Kennedy appeared before news outlets and proclaimed his intention to pray at the 50-yard line immediately after the game. *Kennedy*, 991 F.3d, at 1011.

His supporters proceeded to “stampede” the field, with some “jumping the fence and others running among the cheerleaders, band[,] and players.” *Id.* at 1013; JA 181; JA 354. Afterward, the school district received complaints that students had been knocked down in the “rush of spectators on to the field.” JA 181; JA 354. After the event, the school district was forced to make arrangements with the Bremerton Police Department to secure the field after games. *Ibid.* The chaos stemming from Kennedy’s prayers with students led Bremerton’s head football coach, Nathan Gillam, to express concern “about the safety of the players who were in [his] care,” as well as other students at the games, and himself. JA 347. The fear rose to such an extent that he asked a police officer and fellow coach whether they “could be shot from the crowd.” *Ibid.* He also testified that “an adult who [he] had never seen before came up to [his] face and cursed [him] in a vile manner.” JA 346. As a result of these concerns, Gillam “decided that [he] would resign” from the coaching position he had held for eleven years. JA 347.

Even setting aside the significant self-generated publicity surrounding Kennedy’s prayers, any claim that Kennedy engaged in personal, private exercise ignores the immense power Kennedy holds to influence and coerce students by virtue of his position as coach, a paid public school employee. Kennedy’s own *amici* illustrate the power of his position and ability to pressure students to conform to his beliefs. Former football coach Tommy Bowden stated in his *amicus* brief in support of petitioner that “[e]ven more so than the student/teacher relationship, the student-athlete/coach relationship is highly personal, with the coach serving not only as a coach, teacher, and role model, but also . . . as a mentor, a counselor, and a pseudo-

parental figure.” Brief for Coach Tommy Bowden as *Amicus Curiae* 14. This is precisely why the coach’s position may not be abused to promote and coerce religious exercise.

Kennedy’s ability to coerce students to pray is not merely theoretical. The record reflects that several students felt pressure to pray despite their religious beliefs “because they did not wish to separate themselves from the team.” JA 356. The students feared the ostracization that history shows us follows religious activity by school officials while on duty. *See supra* Section A.2. Forcing his school employer to allow Kennedy to continue using his position of authority to express his preferred faith with students would subject impressionable students to the exact pressure the Establishment Clause seeks to protect against. It would force students to conform, or at least appear to conform, to the tenets of Kennedy’s preferred faith or risk ostracization, harassment, and humiliation. It would deny the students the “freedom to embrace, to profess and to observe the Religion” or nonreligion of their choosing. Remonstrance, at ¶ 4.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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*Members of the U.S. House of
Representatives*

April 1, 2022

APPENDIX

APPENDIX

List of *Amici Curiae*¹

Congressman Jamie Raskin, Maryland's 8th District in the U.S. House of Representatives

Congresswoman Suzanne Bonamici, Oregon's 1st District in the U.S. House of Representatives

Congressman Steve Cohen, Tennessee's 9th District in the U.S. House of Representatives

Congressman Jared Huffman, California's 2nd District in the U.S. House of Representatives

Congresswoman Carolyn B. Maloney, New York's 12th District in the U.S. House of Representatives

Congressman Jerrold Nadler, New York's 10th District in the U.S. House of Representatives

Congresswoman Eleanor Holmes Norton, District of Columbia in the U.S. House of Representatives

Congressman Mark Pocan, Wisconsin's 2nd District in the U.S. House of Representatives

Congresswoman Jan Schakowsky, Illinois's 9th District in the U.S. House of Representatives

Congressman Robert "Bobby" C. Scott, Virginia's 3rd District in the U.S. House of Representatives

Congresswoman Rashida Tlaib, Michigan's 13th District in the U.S. House of Representatives

¹ *Amici* appear in their individual capacities; institutional affiliations are listed here for identification purposes only.