No. 18-12

IN THE
Supreme Court of the United States

JOSEPH A. KENNEDY,
Petitioner,
v.
BREMERTON SCHOOL DISTRICT,
Respondent.

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

BRIEF *AMICUS CURIAE* OF THE FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Foundation for Moral Law[1] (the Foundation), is a national public-interest legal organization based in Montgomery, Alabama, dedicated to defending a strict interpretation of the United States Constitution according to the intent of its Framers.

The Foundation believes that freedom of religion and freedom of expression are among the most fundamental rights granted by God and guaranteed by the First Amendment to the United States Constitution. The Foundation is concerned that the respondent school district in this case, like many others across the country, has chosen to sacrifice the fundamental rights of religion and expression in a misguided effort to avoid Establishment Clause challenges.

The Foundation also believes that government may not selectively target expressions of faith for suppression while freely permitting secular expression.

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[1] Pursuant to Rule 37, all parties have received timely notice of intent to the file this brief and have consented to its filing. No party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Because the Ninth Circuit's decision, *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813 (9th Cir. 2017), conflicts with decisions of this Court and of other courts, it contributes to confusion and uncertainty among judges, school board attorneys, school officials, and students all across the nation about permissible religious expression at public school athletic events. This case presents the Court with an opportunity to clear up that confusion and prescribe clear guidelines on this most important and perplexing issue.

Coach Kennedy's prayer at the 50-yard line after football games was his personal expression and was not announced over the loudspeaker, endorsed by school officials, or joined by anyone other than those who voluntarily chose to join him. His prayer, therefore, did not constitute an establishment of religion in violation of the First Amendment.

Coach Kennedy requested an accommodation of his religious observance and practice pursuant to the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* (Title VII). The only "hardship" issue raised by the District was concern about an Establishment Clause violation. Because Coach Kennedy's prayer did not violate the Establishment Clause, accommodating it cannot be an "undue hardship."

To determine whether Coach Kennedy's prayer violates the Establishment Clause, the Court should look to the plain wording of the First Amendment and the intent of its Framers, not modern court-crafted "tests." The Framers recognized that human

rights are the gift of God, not grants by government. They therefore made religious liberty, which includes the right and duty to acknowledge God, the first right secured by the Bill of Rights.

This case offers the Court an opportunity to explain what liberty and tolerance really mean.

ARGUMENT

I. The importance of granting certiorari in this case.

A. The Ninth Circuit's decision conflicts with decisions of this Court and of other circuits about religious speech in public school settings.

In contrast to the Ninth Circuit's ruling, other courts have recognized that teachers do have First Amendment rights of free speech and free exercise of religion in a public school setting. *See, e.g.*, *James v. Bd. of Educ.*, 461 F.2d 566, 573 (2nd Cir. 1972) (noting that school authorities may not arbitrarily censor a teacher's speech, especially when the speech "is not coercive and does not arbitrarily inculcate doctrinaire views in the minds of the students"); *Chandler v. Siegelman,* 230 F.3d 1313, 1317 (11th Cir. 2000) ("Permitting students to speak religiously signifies neither state approval nor disapproval of that speech. The speech is not the State's—either by attribution or by adoption. The permission signifies no more than that the State acknowledges its constitutional duty to tolerate religious expression.").

See also Adler v. Duval Cnty. Sch. Bd., 250 F.3d 1330 (11th Cir. 2001).

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker,* 364 U.S. 479 (1960). Neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 506 (1969).[2]

B. Confused and perplexed about what manner of religious expression is permitted at public school athletic events, students and school personnel across the nation are looking to this Court for guidance.

In countless instances, extending beyond those cases that have gone to court, teachers, administrators, school board members, school board

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[2] At least to some extent, the Tinkers' speech was religious or religiously-motivated. The father of the Tinker children was a Methodist clergyman. The children wore their armbands during the Christmas season and fasted on December 16. *Tinker,* 383 U.S. at 516 *(*Black, J., dissenting).

Nor does *Tinker* suggest that free expression in public schools is limited to students rather than teachers. In a concurring opinion, Justice Stewart expressed his disagreement with "the Court's uncritical assumption that, school discipline aside, the First Amendment rights of children are coextensive with those of adults." *Id.* at 515 (Stewart, J., concurring). Justice Stewart seems to suggest that the First Amendment rights of teachers in a public school setting are greater than, not lesser than, those of students.

attorneys, coaches, and athletes have puzzled over what manner of religious expression is permitted or prohibited in public schools and at public school athletic events. Those instances have become so frequent that during the fall of 2017, the Foundation for Moral Law prepared and distributed to all Alabama school superintendents, school board members, and school board attorneys a four-page *Memorandum on Student Religious Speech at Athletic Events*.[3] Needless to say, the advice given to schools by groups like the Foundation for Moral Law, Alliance Defending Freedom, or Liberty Counsel differs markedly from that given by groups like the American Civil Liberties Union or the Freedom From Religion Foundation.

School personnel throughout the nation are confused as to what they may or may not allow. In some cases they unfortunately choose what appears to be the path of least resistance by prohibiting all religious expression, thereby abridging the free speech and free exercise rights of those who want to engage in religious expression.

To provide clear answers in this perplexing situation, this Court should grant Coach Kennedy's petition for a writ of certiorari.

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[3] http://morallaw.org/wp-content/uploads/2011/05/Student-Speech-at-Athletic-Events.pdf

II. The Bremerton School District wrongfully refused to accommodate Coach Kennedy's free exercise of religion.

A. Coach Kennedy properly and timely requested an accommodation.

On October 14, 2015, Coach Kennedy, through his attorney, sent the District a written request for a religious accommodation under the Civil Rights Act of 1964 to allow him to continue his post-game prayer. *Kennedy*, 869 F.3d at 818.

B. The Bremerton School District had a duty to accommodate Coach Kennedy's religious expression unless it could demonstrate that such accommodation would create an "undue hardship" on the conduct of school business.

The Civil Rights Act of 1964 was amended in 1972 "to strengthen the antidiscrimination provisions of Title VII."[4] It states in relevant part:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably

[4] *See* Bradley R. Jardine, *Title VII of the Civil Rights Act Requires Reasonable Accommodation of Employee Religious Beliefs by Employer Despite Conflicting Lawful Agency Shop Provision*—Cooper v. General Dynamics, 1977 BYU L. Rev. 152; George P. Sape & Thomas J. Hart, *Title VII Reconsidered: The Equal Employment Opportunity Act of 1972,* 40 Geo. Wash. L. Rev. 824 (1972).

> accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e(j).

Section (j) raises three questions: (1) What does "reasonably accommodate" mean? (2) What constitutes an "undue hardship"? and (3) Where does the burden of proof lie? A fourth question, what constitutes "religious observance and practice," is not at issue here because the District does not dispute that Coach Kennedy's prayer is a matter of religious observance and practice.

A "reasonable accommodation" is one that eliminates the conflict with the employee's religious observance and practice without creating an undue hardship for the employer.

> A proposed accommodation is not reasonable if it only eliminates part of the conflict and a full accommodation would not pose an undue hardship. For example, where an individual's religious beliefs prohibit the individual from working from sundown Friday through sundown Saturday, the employer will not satisfy Title VII if it only offers to avoid scheduling the individual for Saturday (but not Friday night shifts.[5]

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[5] Peter T. Shapiro, *Examining the Duty to Provide Religious Accommodations,* Lexis Practice Advisor Journal (Sept. 13,

The partial accommodation the District has offered to Coach Kennedy is not reasonable because a full accommodation is possible without undue hardship to the school district.

What constitutes an "undue hardship" is difficult to define, but several observations are clear. An accommodation imposes an undue hardship where it imposes on the employer "more than a de minimis cost," 29 C.F.R. § 1605.2(e). Coach Kennedy's prayer imposes no cost at all. An accommodation can impose an undue hardship if it causes a disruption for the employee's coworkers. For example, in one case a federal appeals court did not require an employer to accommodate an employee whose religious beliefs required her to wear a graphic anti-abortion pin that made her co-workers upset and caused coworkers' productivity to decline. *Wilson v. U.S.W. Commc'ns,* 58 F.3d 1337, 1342 n.3 (8th Cir. 1995). Likewise, in *Brener v. Diagnostic Center Hosp.,* 671 F.2d 141, 147 (5th Cir. 1982), the court did not require an employer to meet an employee's religious need for a work-schedule accommodation that would require coworkers to cover the employee's shifts, would disrupt work routines, and would result in perceived favored treatment of the religious employee that would negatively affect morale. No such disruption has been shown here except for a few concerns that were raised after this issue gained widespread

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2016), https://www.lexisnexis.com/lexis-practice-advisor/the-journal/b/lpa/archive/2016/09/13/examining-the-duty-to-provide-religious-accommodations.aspx

publicity. Many more people reacted favorably to Coach Kennedy's practice.

Putting the terms "reasonable accommodation" and "undue hardship" together, the employer has a duty to offer to the employee a reasonable accommodation that eliminates the conflict with the employee's religious observance and practice short of creating an undue hardship for the employer. An EEOC official observed:

> Once an employee or applicant places the employer on notice of her or his need for a religious accommodation, it is the employer's responsibility to find a reasonable accommodation for that individual. In the EEOC's view, an employer satisfies its obligation when it offers all reasonable means of accommodation without causing itself undue hardship. An employer who fails or refuses to offer a reasonable accommodation can avoid liability only by demonstrating that undue hardship would ensue from each possible alternative.[6]

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[6] Barbara L. Kramer, *Reconciling Religious Rights & Responsibilities,* 30 Loy. U. Chi. L. J., 439, 461 (1999). Her conclusion is not at odds with *Trans World Airlines. Inc. v. Hardison,* 432 U.S. 63 (1977), which concluded that all three possible accommodations worked an undue hardship upon the airline or with *Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. 60 (1986), which concluded that the accommodation offered by the Board was reasonable.

Although the employee has a duty to notify the employer of the conflict with his religious observance and practice (Coach Kennedy has done so) and may have a duty to work with the employer to try to resolve the conflict by finding an accommodation (Coach Kennedy has done so), the employee is not obligated to accept any accommodation that does not fully eliminate the conflict with his religious observance and practice.[7]

Finally, who has the burden of proof? The phrase "unless an employer demonstrates" establishes that the Bremerton School District has the burden of production and persuasion, *i.e.*, the burden to assert and prove that it cannot accommodate Coach Kennedy's religious observance and practice without undue hardship. "The burden of proving undue hardship is placed upon the employer, and the EEOC requires specific evidence that he could not accommodate without undue hardship." John D. Dadakis and Thomas M. Russo, *Religious Discrimination in Employment: The 1972 Amendment—A Perspective,* 3 Fordham Urb. L. J., 327, 341 (1975). Thus, "to sustain a finding of undue hardship there must be a showing by the employer of a substantial burden upon the continued operation of his business." *Id.* Dissatisfaction or inconvenience is insufficient; "inconvenience is not 'undue hardship.'" *Kettell v. Johnson & Johnson,* 337 F. Supp. 892, 895 (E.D. Ark. 1972).

The District has utterly failed to meet its burden of proof. The District argues that granting the

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[7] Shapiro, *Examining the Duty*, *supra* n.5.

accommodation would violate the Establishment Clause. Because Coach Kennedy's prayer does not violate the Establishment Clause, as will be demonstrated below, allowing the prayer is not an "undue hardship" on the school district.

C. The Establishment Clause is not a valid basis for refusing to accommodate Coach Kennedy's religious exercise.

The Establishment Clause, and the entire First Amendment, is a shield, not a sword. Its purpose is to protect the religious rights of all, not to strike down religious expression.

1. Even if Coach Kennedy's prayer is government speech, the Establishment Clause does not prohibit it.

The District's argument that Coach Kennedy's prayer is government speech or school speech rather than individual expression leads to the absurd conclusion that anything a coach, teacher, or school official says is "school speech." Yet in *Tinker* this Court stated that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." 393 U.S. at 506.

But even if Coach Kennedy's prayer is government speech, the Establishment Clause does not prohibit it. Nothing in the history or text of the Establishment Clause suggests that its purpose was to prohibit the acknowledgement of God.

Human rights are bestowed by God, not by government. The foundational document of American law, the Declaration of Independence, begins with an acknowledgement of "the laws of nature and of nature's God," and states that all men are "endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." The Declaration further recognizes that "to secure these rights, Governments are instituted among Men." Thus, governments do not grant rights but only "secure" those God has already granted.

"We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson,* 343 U.S. 306, 313 (1952). A decade later, the author of *Zorach* again acknowledged the Divine Source of human rights:

> The institutions of our society are founded on a belief that there is an authority higher than the authority of the state, that there is a moral law which the state is powerless to alter, and that the state possesses rights conferred by the Creator which government must respect.

McGowan v. Maryland 366 U.S. 420, 562 (1961) (Douglas, J., dissenting). It naturally follows, then, that religious liberty is the first freedom secured by the Bill of Rights. If God is the source of human rights, those rights must of necessity include the right to acknowledge God.

George Washington, who chaired the Constitutional Convention and was President when the Bill of Rights was adopted, expressed this truth by declaring that "it is *the duty of all nations to acknowledge the providence of Almighty God*, to obey His will, to be grateful for his benefits, and humbly to implore His protection and favor." *National Day of Thanksgiving Proclamation* (Oct. 3, 1789) (emphasis added).

President Lincoln during the Civil War was even more specific on this point:

> Whereas it is *the duty of all nations to acknowledge the providence of Almighty God*, to obey His will, to be grateful for his benefits, and humbly to implore His protection and favor....
>
> Whereas, the Senate of the United States, devoutly recognizing the Supreme Authority and just Government of Almighty God, in all the affairs of men and of nations, has, by a resolution, requested the President to designate and set apart a day for National prayer and humiliation:
>
> And whereas it is the *duty of nations as well as of men, to own their dependence upon the overruling power of God*, to confess their sins and transgressions, in humble sorrow, yet with assured hope that genuine repentance will lead to mercy and pardon; and to recognize the sublime truth, announced in the Holy Scriptures and

> proven by all history, that those nations only are blessed whose God is the Lord....

Proclamation Appointing a National Fast Day (March 30, 1863) (emphasis added).

In 1853, when the constitutionality of the congressional chaplaincy was questioned, the Senate Judiciary Committee undertook an exhaustive study of the background and meaning of the Establishment Clause. The Committee concluded in part:

> The clause speaks of "an establishment of religion." What is meant by that expression? It referred, without doubt, to that establishment which existed in the mother country, its meaning is to be ascertained by ascertaining what that establishment was. It was the connection with the state of a particular religious society, by its endowment, at the public expense, in exclusion of, or in preference to, any other, by giving to its members exclusive political rights, and by compelling the attendance of those who rejected its communion upon its worship, or religious observances. These three particulars constituted that union of church and state of which our ancestors were so justly jealous, and against which they so wisely and carefully provided. ... Our fathers were true lovers of liberty, and utterly opposed to any constraint upon the rights of conscience. They intended, by this amendment, to prohibit "an establishment

> of religion" such as the English church presented, or anything like it. But they had no fear or jealousy of religion itself, nor did they wish to see us an irreligious people; *they did not intend to prohibit a just expression of religious devotion by the legislators of the nation, even in their public character as legislators; they did not intend to send our armies and navies forth to do battle for their country without any national recognition of that God on whom success or failure depends*; they did not intend to spread over all the public authorities and the whole public action of the nation the dead and revolting spectacle of 'atheistical apathy.' Not so had the battles of the revolution been fought, and the deliberations of the revolutionary Congress conducted. On the contrary, all had been done with a continual appeal to the Supreme Ruler of the world, and an habitual reliance upon His protection of the righteous cause which they commended to His care.[8]

Washington said the acknowledgement of God is "the duty of nations." Lincoln added that the acknowledgement of God is "the duty of nations as

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[8] Senate Rep. No. 32-376 (1853), *The Reports of Committees of the Senate of the United States for the Second Session of the Thirty-Second Congress,* 1852-53, at 1-4 (Washington, D.C. 1853) (emphasis added). In the same year the House Judiciary Committee conducted a similar study and came to the same conclusion.

well as of men." The Senate Judiciary Committee said the Establishment Clause does not prohibit "a just expression of religious devotion by the legislators of the nation, even in their public character as legislators." Even if Coach Kennedy's prayer is "government speech," the Establishment Clause permits it as an acknowledgement of God.

2. But Coach Kennedy's prayer is not government speech.

Coach Kennedy, and those who want to join him, simply want to pray publicly before, during, or after an athletic event. Any who wish to join him may do so, but no one is coerced or pressured to participate.

Unlike the situation in *Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290 (2000), the Bremerton School District did not hold an election as to whether to have prayer and who should lead the prayer, nor was the prayer broadcast on the school loudspeaker. Coach Kennedy conducted his prayer quietly and by himself.

Unlike the situation in *Lee v. Weisman,* 505 U.S. 577 (1992), Coach Kennedy's prayer took place at a high-school athletic event, not a middle school graduation. Unlike the rabbi in *Lee v. Weisman,* the school district did not select Coach Kennedy to deliver a prayer; he chose to do so on his own.[9] Unlike

[9] As Justice Souter explained: "If the State had chosen its graduation day speakers according to wholly secular criteria, and if one of those speakers (not a state actor) had individually chosen to deliver a religious message, it would have been harder to attribute an endorsement of religion to the State." *Weisman*,

Lee v. Weisman, the superintendent did not give Coach Kennedy a publication entitled "Guidelines for Civic Occasions" telling him what his prayer should or should not contain. The school district did not announce the prayer to the attendees or ask them to join the prayer, to stand and bow their heads, or even to be silent. The prayer was not carried on the loudspeaker and was audible only to those standing close to Coach Kennedy. Those who chose not to join or observe the prayer were completely free to continue their conversations, sing the school fight song, exit the stadium, or whatever else they were doing.

Any uncertainty about whether Coach Kennedy's prayer was government speech or private speech could easily be resolved by the District adopting a policy stating that all such expressions are private speech. *See Weisman,* 505 U.S. at 645 (Scalia, J., dissenting).

This case is similar to the circumstances in *Chandler v. Siegelman,* 230 F.3d 1313, 1317 (11th Cir. 2000), and *Adler v. Duval Cnty. Sch. Bd.,* 250 F.3d 1330 (11th Cir. 2001). In both of those cases, religious speech was permitted at public school athletic events.

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505 U.S. at 630 n.8 (Souter, J., concurring). Similarly, because the District hired Coach Kennedy according to wholly secular criteria, his personal decision to deliver a religious message is harder to attribute to the District.

3. The Ninth Circuit erred in its use and misuse of the endorsement test.

The so-called "endorsement test" set forth in *Capitol Square v. Pinette,* 515 US. 753, 779-80 (1995), is utterly foreign to the plain language of the Establishment Clause, to the history and circumstances surrounding its adoption, and to its use in early American history.

Furthermore, the endorsement test is unworkable because it requires entirely subjective speculation as to what some fictitious reasonably informed observer might or might not perceive as government endorsement of religion. The problems with that test were clearly set forth in the dissenting opinion of Judge Kelly, joined by Judge O'Brien, Judge Tymkovich, and then-Judge Gorsuch in *American Atheists v. Duncan,* 637 F.3d 1095, 1101-07 (10th Cir. 2010). *See* especially Part B of the opinion, *id.* at 1104-06 ("The Unreasonable 'Reasonable Observer'"). As then-Judge Gorsuch said on another occasion: "Not only does [the Tenth Circuit's] observer do the wrong job, he does it poorly." *Green v. Haskell Cnty. Bd. of Comm'rs,* 574 F.3d 1235, 1246 (10th Cir. 2009) (Gorsuch, J., dissenting from denial of reh'g *en banc*).

Possibly the best example of the misuse of this unworkable and malleable test is the Ninth Circuit's inapt characterization of the "reasonable observer" as one who sees Coach Kennedy praying but is unaware that other coaches do not pray, that the District has not ordered him to pray, and that the First Amendment expressly protects religious liberty.

The endorsement test is further stretched to absurdity by suggesting that a public prayer could send a "message of exclusion" to those who do not want to pray. Justice Scalia described such subjective speculation as "psychology practiced by amateurs." *Weisman,* 505 U.S. at 636 (Scalia, J., dissenting). Once a court embarks upon such a subjective "psycho-journey," *id.* at 643, nothing prevents it from applying a double standard. The Ninth Circuit's concern for feelings of "exclusion" allegedly felt by the person who does not want to pray does not extend to those who want to pray but are prohibited from doing so.

This Court should grant certiorari in this case to address what Justice Thomas called the "shambles" of inconsistent decisions that constitute current Establishment Clause jurisprudence. *Utah Highway Patrol Ass'n v. American Atheists, Inc.,* 565 U.S. 994, 1004 (2011) (Thomas, J., dissenting). The better approach is to return to the plain meaning of the First Amendment as intended by its Framers.

III. Refusing to allow Coach Kennedy to pray while allowing other forms of expression is censorship of religion and discrimination against religion.

The principal or primary effect of a school policy that prohibits coaches from praying on the athletic field after games is to inhibit religion.

The policy singles out religious expression—and only religious expression—for censorship and

suppression. If Coach Kennedy wanted to quote from Socrates or Plato, from Chaucer or Shakespeare, from Washington or Lincoln, from Mark Twain or Will Rogers, or any other source, he would be free to do so. If he wanted to stand and salute the American flag, he would be free to do so. But because his expression is religious, it has been prohibited. By overtly and expressly discriminating against religious expression, the Bremerton policy has the primary effect of inhibiting religion.

Most recently, in *Masterpiece Cakeshop, Ltd., v. Colorado Civil Rights Comm'n,* No. 16-111 (U.S. June 4, 2018), this Court noted that the Colorado "commissioners endorsed the view that religious beliefs cannot legitimately be carried into the public sphere or commercial domain, implying that religious beliefs and persons are less than fully welcome in Colorado's business community." Slip op. at 12. The Court added:

> The Free Exercise Clause bars even "subtle departures from neutrality" on matters of religion. [*Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 534 (1993)]. Here, that means the Commission was obliged under the Free Exercise Clause to proceed in a manner neutral toward and tolerant of Phillips' religious beliefs. The Constitution "commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own

> high duty to the Constitution and to the rights it secures." *Id.* at 547.

Masterpiece Cakeshop, slip op. at 17.

An accommodation policy that allowed religious persons to express themselves would create no hardship at all for the Bremerton School District and would affirmatively teach students the true meaning of religious liberty and religious tolerance. Instead, by suppressing Coach Kennedy's right to free exercise and free speech, the District chose to treat him as a second-class citizen. Surely, the Establishment Clause does not "compel the government to purge from the public sphere all that in any way partakes in the religious." *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring).

CONCLUSION

For far too long, many school officials have assumed that the easiest way to achieve religious neutrality is to prohibit religious expression. But this approach to the Establishment Clause ironically establishes "a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.'" *School Dist. of Abington Township v. Schempp,* 374 U.S. 203, 225 (1963) (quoting *Zorach*, 343 U.S. at 314).

This case affords the Court an opportunity to correct an injustice and to reaffirm the constitutional protection for religious expression in the public arena.

The Foundation urges the Court to grant Coach Kennedy's petition for a writ of certiorari.

Respectfully submitted,

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