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 FOR PSYCHOLOGY AND NEUROSCIENCE SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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April 1, 2022

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. The parties filed blanket consents to the filing of *amicus* briefs.

[2] *Amici* submit this brief solely on their own behalf and not as representatives of their universities. *Amici* are listed with institutional affiliations for purposes of identification only.

velopment and of the *Cambridge Elements in Research Methods for Developmental Science*. He also serves as Docent Professor of Educational Psychology at the University of Helsinki, Finland, and is a Fellow of the American Psychological Association, the Association for Psychological Science, and the International Society for the Study of Behavioural Development. Dr. Laursen has authored over 150 scholarly articles and edited several books on close relationships during adolescence and childhood, with a special emphasis on influence and conformity in friendships and peer groups.

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Amici submit this brief to aid the Court in understanding the pressure that teenage football players would feel to participate in Petitioner's postgame prayers. This Court has looked to psychological and neuroscientific research in prior cases where the legal issues turned on adolescents' mental states. *See, e.g.*, *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311–12 (2000); *Lee v. Weisman*, 505 U.S. 577, 593–94 (1992). It should do the same here.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has held that a pregame prayer at a high school football game violated the Establishment Clause because it had "the improper effect of coercing those present to participate in an act of religious worship." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000). Applying this precedent, the lower courts concluded that Petitioner's postgame prayers at high school football games also violated the Establishment Clause because they, too, coerced students to participate in acts of religious worship. Pet. App. 17–23, 153–60.

Petitioner contends that there can be no coercion here, because he does not think he pressured any student athlete to participate in his prayers. Pet. Br. 5 (citing Petitioner's own declaration). But whether Petitioner's actions were coercive does not depend on Petitioner's characterization of his actions, even if that

characterization were accurate. *But see* JA 295 (Petitioner sought to "continue" his "practice of praying *with students*" (emphasis added)). Nor does the coercive effect of his postgame prayers turn on whether those prayers were well intentioned, Pet. Br. 7; *but see* Pet. App. 16 (finding that Petitioner intended to send a message about "appropriate behavior"), or whether Respondent disclaimed responsibility for them, Pet. Br. 9, 33. What matters is whether the student athletes felt coerced to participate in the prayers.

They did. "At least one student felt compelled to join Coach Kennedy's post-game prayers, contrary to the player's own beliefs, because he feared he would get less playing time if he did not participate." Pet. App. 71. Some parents likewise indicated that "their children had participated in the prayers to avoid being separated from the rest of the team or to ensure playing time." Pet. App. 136; *see also* JA 186, JA 356. Several students, and their parents, thanked Respondent for its actions to address the "awkward situations where they did not feel comfortable declining to join with the other players in Mr. Kennedy's prayers." JA 359. And when Petitioner did *not* visibly pray, none of his players did, either. JA 181.

The Court has observed that officially sponsored prayer in public schools poses "heightened concerns with protecting freedom of conscience from subtle coercive pressure." *Lee v. Weisman*, 505 U.S. 577, 592 (1992). The coercive pressure to participate in Petitioner's prayers was anything but subtle. Petitioner prayed on the 50-yard line, immediately following the team's games, before the players left the field, while spectators remained in the stands. Pet. App. 15, 72.

Petitioner's actions created pressure to participate to which adolescent student athletes would likely succumb, even if doing so were contrary to their own beliefs and even if the pressure was never explicit.[3] The adolescent student athletes would be influenced to follow Petitioner's lead because he controlled benefits they valued (such as playing time) and because of his status as a role model and authority figure. Compounding that direct pressure, the sight of some teammates, along with classmates and community members, joining Petitioner in prayer influenced more reluctant student athletes to do the same. This pressure to conform—whether explicit or implicit—was undoubtedly amplified by an innate desire to abide by the norms of the team itself, for adolescents are especially vulnerable to peer influence when faced with the possibility of social approval or disapproval.

The fact that most of the team joined Petitioner's prayers meant that everyone else would likely feel compelled to do so as well. To refuse would be to risk social reprobation from Petitioner, teammates, and classmates. That student athletes felt both direct and indirect pressure—all traceable to Petitioner—to participate in a religious ritual led by a public high school employee underscores what is already well-known by this Court and well-studied in psychology and neurobiology: Adolescents are behaviorally and neurobiologically predisposed to follow the lead of authority

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[3] Adolescence begins with puberty, at around 10–12 years of age, and ends with physiological maturity, at around 19 years of age. *Adolescence*, APA Dictionary of Psychology, https://dictionary.apa.org/adolescence.

figures, like coaches, and similarly susceptible to pressure—even unconscious, non-explicit pressure—to conform to their peers' actions.

I. The Court must consider the coercive nature of Petitioner's prayers from the perspective of an adolescent. Petitioner's prayers most directly impacted adolescent student athletes. And as the Court has long recognized—including in cases involving prayer at public schools—psychological and neuroscientific research confirms that adolescents are especially susceptible to outside influences. Recent scientific research, including neuroimaging work, confirms that this vulnerability is the result of two distinct, yet interconnected trajectories of adolescent brain development. While adolescents develop a heightened sensitivity to rewards around the time of puberty, including socioemotional rewards, their ability to control their impulses and regulate their behavior develops much more gradually. As a result of these dual systems, rewards have far greater impact on adolescent behavior than adult behavior.

II. This Court, other courts, and even Petitioner himself have noted the influence that coaches have over adolescent student athletes. Coaches are role models with immense power to dispense rewards of great value to student athletes, such as roster spots, playing time, and college recommendations. That power, coupled with adolescents' heightened reward sensitivity and still maturing self-control, gives coaches potent influence over athletes' behavior—even when coaches do not apply explicit pressure. Moreover, because adolescents are especially inclined toward authority figures and role models, a coach's

status as an authority figure and respected mentor adds to his influence.

III. In addition to the influence Petitioner exerted as a coach and role model, the Court must also account for the compounding influence that peers, and teammates in particular, have on one another. Adolescents are driven, more so than any other age group, by their desire for social approval among their peers, their heightened sensitivity to rewards in the presence of peers, and their fidelity to the team identity. Those salient influences were clearly at play here, where Petitioner's prayers were attended not only by spectators and media but by a majority of the team. Here, too, the compounding effect of peer influence can be traced back to Petitioner. As a coach and role model for the team, the natural result of the direct coercive effect of Petitioner's prayers was that some players would join—thereby increasing the pressure on their more reluctant teammates to do the same.

ARGUMENT

I. The Court Should Look to Scientific Studies to Analyze the Coercive Effect That Petitioner's Prayers Would Have on Adolescent Student Athletes.

As this Court has previously recognized, the coercive effect of officially sponsored prayer at public schools must be assessed from the perspective of children and adolescents. *See Lee v. Weisman*, 505 U.S. 577, 592–94 (1992). Recent neurobiological research confirms the importance of treating adolescents differently from adults.

The possibility of coercion is "most pronounced" in schools precisely because children and adolescents are

especially susceptible to influence. *Id.* at 577, 592–94; *see also Town of Greece v. Galloway*, 572 U.S. 565, 590 (2014) (plurality op.) ("mature adults" are "'not readily susceptible to religious indoctrination or peer pressure'" (quoting *Marsh v. Chambers*, 463 U.S. 783, 792 (1983))). Concerns specific to adolescents are especially salient here, where Petitioner prayed on the 50-yard line immediately after high school football games, before adolescent players from both teams had left the field and while spectators—including dozens of students—remained in the stands. Pet. App. 15, 72. Indeed, players and student spectators alike were even invited to join in the prayers. Pet. App. 4.

Time and time again, this Court has observed—and science has confirmed—that "children cannot be viewed simply as miniature adults." *J.D.B. v. North Carolina*, 564 U.S. 261, 273 (2011). Indeed, "because different abilities mature along different timetables, adolescents of a given age could be adult-like in some respects but not others." Grace Icenogle et al., *Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample*, 43 Law & Hum. Behav., no. 1, 2019, at 69, 71 (hereinafter "*Adolescents' Cognitive Capacity*"). For instance, "[t]he maturation of basic cognitive abilities is complete around age 16." Laurence Steinberg, Adolescence 245 (13th ed. 2023) (hereinafter "Adolescence"); *see also Adolescents' Cognitive Capacity*, *supra*, at 69, 77. By that age, adolescents are often capable, among other things, of independently forming their own religious beliefs. Adolescence, *supra*, at

258–59. Yet adolescents are neurobiologically susceptible to certain outside influences that may pressure them to act inconsistently with those beliefs.

By the time adolescents reach puberty, their brains are nearly adult-like in their capacity to process rewards and incentives. But their brains' ability to modulate behavioral responses to those rewards and incentives develops much more gradually, and may not fully mature until adulthood. As a result of these distinct developmental trajectories—sometimes called "dual systems"—adolescents are much more vulnerable than adults to outside influences capable of manipulating the reward structures they face.

This Court has long looked to psychology and neuroscience to understand these differences—and concluded that they matter in the very context in which this case arises, among others. In *Lee*, the Court did not consider whether "plac[ing] objectors in the dilemma of participating" in a prayer at a high school graduation ceremony "is acceptable if the affected citizens are mature adults," because they were not. 505 U.S. at 593. Instead, the Court held that "the State may not, consistent with the Establishment Clause, place primary and secondary school children in this position," because "[r]esearch in psychology supports the common assumption that adolescents are often susceptible to pressure" to conform, "and that the influence is strongest in matters of social convention." *Id.* at 593–94 (citing multiple studies coauthored by one of *amici*). The Court reapplied these same lessons in *Santa Fe Independent School District v. Doe*, in holding that a pregame prayer at a high school football game violated the Establishment Clause. 530 U.S. 290, 311–12 (2000).

The Court has relied on scientific research on psychological and neurobiological differences between adolescents and adults in other contexts, too. For instance, in *Roper v. Simmons*, which held the death penalty unconstitutional as applied to individuals under 18 years of age, the Court cited "scientific and sociological studies"—including one co-authored by one of *amici*—showing that "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." 543 U.S. 551, 569 (2005). Similarly, in *Miller v. Alabama*, the Court's conclusion that "children are constitutionally different from adults for purposes of sentencing" rested "not only on common sense," but also on "'developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds'—for example, in 'parts of the brain involved in behavior control.'" 567 U.S. 460, 471–72 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)). As the Court had previously explained in *Graham*—relying on *amicus* briefs by psychiatrists and psychologists that explored the same trajectories of neurobiological development relevant here—those regions of the brain "continue to mature through late adolescence." 560 U.S. at 68 (citing Brief for the American Medical Association et al. at 16–24 and Brief for the American Psychological Association et al. at 22–27, *Graham v. Florida*, 560 U.S. 48 (2010) (Nos. 08-7412, 08-7621)).

Research conducted since this Court's decisions in *Lee*, *Santa Fe*, *Roper*, *Graham*, and *Miller* has only reinforced the importance of the dual systems development of the adolescent brain. The first system matures relatively early in adolescence, as "[m]ajor

changes within the brain's reward-processing circuitry occur around the time of puberty." Ashley R. Smith et al., *Peers Influence Adolescent Reward Processing, But Not Response Inhibition*, 18 Cognitive, Affective & Behav. Neuroscience, no. 2, 2018, at 284, 285 (hereinafter "*Peers Influence Adolescent Reward Processing*"). In early adolescence, this circuitry—which includes the ventral striatum and orbitofrontal cortex, among other regions of the brain—undergoes "dramatic remodeling . . . with respect to the distribution and density of dopamine receptors." Jason Chein et al., *Peers Increase Adolescent Risk Taking*, 14 Dev. Sci, no. 2, 2011, at F1, F2 (hereinafter "*Peers Increase Adolescent Risk Taking*").

Neuroimaging studies—brain scans, in common parlance—"show especially heightened activation" of these reward-processing regions "during adolescence in response to reward-relevant cues and reward anticipation." *Id.* at F2 (citations omitted). These regions are activated "more intensively during early and middle adolescence than in childhood or adulthood." Adolescence, *supra*, at 244–45. Moreover, adolescents are generally unaware of their brains' heightened reactivity to rewards and anticipated rewards, *id.* at 245, including "socioemotional reward[s]," Dustin Albert et al., *The Teenage Brain: Peer Influences on Adolescent Decision Making*, 22 Current Directions in Psych. Sci., no. 2, 2013, at 114, 114 (hereinafter "*The Teenage Brain*").

The brain's ability to regulate behavior, such as by controlling impulses, increases during adolescence, too. But this system's development is gradual and protracted. Unlike reward sensitivity—which spikes dramatically around puberty and stays elevated

throughout adolescence—"cognitive capacities supporting efficient self-regulation mature in a gradual, linear pattern over the course of adolescence." *Id.* at 116. This shift may begin as early as preadolescence, but it continues "at least" through the mid-twenties. *Peers Increase Adolescent Risk Taking*, *supra*, at F2. A "growing neuroimaging literature" confirms this developmental trajectory. Laurence Steinberg et al., *Around the World, Adolescence Is a Time of Heightened Sensation Seeking and Immature Self-Regulation*, 21 Dev. Sci., no. 2, 2017, at 1, 2 (hereinafter "*Around the World*").

As a result of these diverging developmental trajectories, the adolescent brain features both an "easily aroused reward system" and "still maturing self-regulatory regions, which limit the young person's ability to resist" the very rewards to which the person is especially sensitive. *Id.* As one representative study puts it, this "developmental asynchrony" is "akin to starting a car's engines before a well-functioning braking system is in place." *Id.* And a body of scientific research on "psychological and behavioral development during adolescence" shows that these developmental patterns manifest themselves in adolescents' real-world behaviors. *Id.* In particular, a "rich literature" describes "how social influences and rewards differentially impact adolescent behavior relative to that of adults" as a result of these neurobiological differences. Kaitlyn Breiner et al., *Combined Effects of Peer Presence, Social Cues, and Rewards on Cognitive Control in Adolescents*, 60 Dev. Psychobiology, no. 3, 2018, at 292, 293 (hereinafter "*Combined Effects*"). Those

differences—and their implications for adolescent behavior—are critical to understanding the coercive effect of Petitioner's behavior in this case.

II. As This Court Has Correctly Recognized, Coaches Powerfully Affect the Behavior of Adolescent Athletes.

This Court has already recognized the power and influence that coaches enjoy over adolescent student athletes. A high school coach, after all, is responsible for "selecting members of the team, . . . assigning roles, and . . . allocating playing time"—and "may wish to take group cohesion and harmony into account" in making such decisions. *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038, 2058 (2021) (Alito, J., concurring). And student athletes' behavior is under "constant supervision" by their coaches. *See Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 678 (1995) (O'Connor, J., dissenting).

That power and access gives coaches "potent" influence over adolescent student athletes' behavior. *Tenn. Secondary Sch. Athletic Ass'n v. Brentwood Acad.*, 551 U.S. 291, 299 (2007). Nearly all adolescent student athletes wish to maximize their playing time during their high school years, and many aspire to "continue on to college or (dream of dreams) professional sports." *Id.* at 298–99. A coach's decisions about roster composition, playing time, and more—all made after closely observing each student athlete's behavior on the field, at practice, and in the locker room—may "play[] . . . on" these "youthful hopes" and the "fears" that accompany them, and "could well exert . . . undue pressure" on adolescents' behavior. *Id.* at 299.

Other courts, too, have recognized the special power that coaches have over adolescent athletes. *See, e.g.*, *Lowery v. Euverard*, 497 F.3d 584, 594 (6th Cir. 2007) ("The coach determines the strategies and plays, and 'sets the tone' for the team."); *Davenport by Davenport v. Randolph Cnty. Bd. of Educ.*, 730 F.2d 1395, 1396 (11th Cir. 1984) (describing "grooming policy" under which coach denied high school student athletes the opportunity to play because they refused to shave); *Adams v. Deloria*, 443 F. Supp. 3d 1093, 1104 (N.D. Cal. 2020) ("His players listened to his speech because he was the football coach . . . ."). Indeed, the district court here found that "Coach Kennedy occupied a 'powerful position in his players' lives.'" Pet. App. 76. And Petitioner himself agreed that "a coach . . . might be the absolute most important person" an adolescent athlete "encounter[s] at school" or "in their overall life," and may enjoy "a tremendous amount of influence" over adolescent athletes. JA 323–24.

The neurobiological phenomena discussed in Part I, *supra*, explain how, given coaches' power, "undue pressure" may result from a coach's actions—even if the coach does not expressly pressure or coerce student athletes into particular behaviors. The adolescent brain's heightened reward sensitivity and still-maturing self-control impact how young student athletes may perceive and respond to a coach's on-field prayer immediately following the game, because those players understand that coaches have bountiful rewards to offer their players.

Consider a high school football coach—like Petitioner here—with roles on both the junior varsity and varsity coaching staffs. JA 167. That coach likely has

the power to decide whether to cut a backup tight end from next year's team; when to elevate a promising junior varsity running back to varsity; and how much more playing time a second-string linebacker has earned. Each of those decisions can confer—or deny—an immediate reward: a spot on the team, a chance to shine under the bright lights, a more prominent role. That same coach can dispense longer-term rewards, too, to those players who hope to "continue on to college or (dream of dreams) professional sports"—or even just to attend college. *Tenn. Secondary*, 551 U.S. at 298–99. For example, the coach may leverage his relationships with Division I college coaches to get a star safety a closer look. Or he might pen recommendation letters to the admissions officers at the nation's top universities extolling a backup offensive lineman's impressive leadership qualities and tireless work ethic.

Because he has so many rewards to offer, a coach who prays on the 50-yard line after a game need not expressly pressure his players to join him for them to be influenced—consciously or not—to do so. The mere possibility that the coach may consider a player's contribution to "group cohesion and harmony," *Mahanoy*, 141 S. Ct. at 2058 (Alito, J., concurring)—or simply a player's bonds with and similarities to the coach—is enough to trigger adolescents' predisposition to seek the rewards that the coach controls by joining the prayer. Because the "sensation seeking" behavior to which adolescents are especially prone includes the "tendency for individuals to pursue activities that are perceived as *potentially* rewarding," *Around the World*, *supra*, at 5 (emphasis added), players will tend to join the prayer even if the coach does not make clear

whether those rewards depend on doing so. As a result, the simple sight of a coach praying by himself—let alone surrounded by teammates, community members, and television cameras—may provide the incentive an eager-to-please player needs to kneel down beside him. In the context of high school athletics, the prayer itself has coercive effect independent of any explicit pressure the coach might impose.

Coercive effect on players is especially likely if the coach betrays any emotion as he kneels down to pray, for adolescents may be "more emotionally reactive to explicit cues indicative of social inclusion or exclusion." Leah H. Somerville, *The Teenage Brain: Sensitivity to Social Evaluation*, 22 Current Directions in Psych. Sci., no. 2, 2013, at 121, 121 (hereinafter "*Sensitivity to Social Evaluation*"). The amygdala—"a brain region . . . critical to emotion processing and social behavior"—shows "greater activation" in adolescents than in adults in response to "a variety of facial emotional cues presented in different contexts." Leah H. Somerville et al., *Behavioral & Neural Representation of Emotional Facial Expressions Across the Lifespan*, 36 Dev. Neuropsychology, no. 4, 2011, at 408, 416, 419. In tandem with adolescents' "underrecruitment of the [prefrontal cortex]," which helps govern emotional responses, this sensitivity to emotional facial cues may alter adolescent behavior. *Id.* at 421. A coach's approving glance at a player who has joined the prayer—or disapproving eye towards one who has not—may trigger these responses and drive still more players to join the coach.

A coach's status as an authority figure and mentor complements his capacity to provide both tangible and socioemotional rewards and increases the likelihood

that players feel pressure to follow his lead. Psychological research shows that adolescents—especially younger adolescents—are "inclined toward obedience" and "authority figures." Adolescence, *supra*, at 256. In one line of research, for instance, both adolescents and adults were "presented with vignettes involving an individual who had gotten into trouble with the law and then are asked how the individual should handle different situations . . . ." *Id.* at 245. This research shows that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to police rather than remaining silent or accepting a prosecutor's offer of a plea agreement." Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav., no. 4, 2003, at 333, 357.

This behavioral finding "do[es] not vary with gender, ethnicity, or socioeconomic status." *Id.* A player may feel pressure to pray with his coach, then, not just because of the goodwill it could build and the rewards that may follow, but also simply because a person he respects—and whom he emulates and follows on a daily basis—is doing the praying. Such pressure is especially likely if, as the Ninth Circuit held here, the coach's prayer was "intended to send a message to students and parents about appropriate behavior and what he values as a coach, in line with his job duties of demonstrative communication as a role model for players." Pet. App. 16 (internal quotation marks omitted).

The importance of football to culture and student life at high schools across the country further magnifies a coach's influence over his players, and indeed the entire school community. For millions of high schoolers, autumn evenings under the glare of Friday night lights are central to the most formative years of life. Many students—"cheerleaders, members of the band, and, of course, the team members themselves"—attend football games as an important part of their high school experiences. *Santa Fe*, 530 U.S. at 311. And countless others "feel immense social pressure, or have a truly genuine desire, to be involved in the extracurricular event that is American high school football." *Id.* "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." *Id.* at 312.

As the media coverage of Bremerton High School's games shows, football coaches enjoy enormous power to shape these gatherings, and team, school, and community identity along with them. With that platform comes the responsibility not to use "social pressure to enforce [religious] orthodoxy." *Id.* (quoting *Lee*, 505 U.S. at 596). Students attending public high school football games should be throwing passes, tackling opponents, chanting slogans, blaring fight songs, and building friendships—not dreading the final whistle's call to prayer with the coach.

In the end, contrary to Petitioner's assertion, Pet. Br. 27, 30, science provides good reason for the law to account for the special role that coaches play in student athletes' lives. Coaches can have extraordinary influence on adolescent behavior because they are

well positioned to offer adolescent athletes rewards that they value deeply, process intensely, and lack the neurobiological resources to resist. In addition to all that, as Petitioner concedes, "students . . . may view [coaches] as mentors and role models." Pet. Br. 30. That position of authority and respect—and a coach's ability to define foundational community events—makes adolescents all the more likely to conform to a coach's example, even if the coach does not explicitly command or pressure them to do so, and even if the school district declines to endorse the coach's actions. "[G]reat authority and coercive power," after all, may result from "students' emulation of . . . role models." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

III. The Influence that Teammates Have on Each Other Compounds a Coach's Influence on Adolescent Behavior.

While this Court has recognized the "potent" influence that coaches have on their players, *see supra* Part II, the coercive effect of Petitioner's prayers is amplified by the fact that they occurred in the presence of many student athletes. Because adolescents are especially prone to peer influence, when some team members join a coach's prayers as a result of his influence, the pressure to join becomes even greater for team members who would prefer not to participate. This second wave of influence, no less than the first, ultimately traces back to the coach's decision to pray in front of his team.

A. Driven By the Desire to Fit In, Adolescents Are More Susceptible to Peer Influence.

Unlike during early childhood, when children are primarily influenced by their parents, adolescents are heavily influenced by their peers. *See, e.g.*, Eva H. Telzer et al., *Neurobiological Sensitivity to Social Rewards and Punishments Moderates Link Between Peer Norms and Adolescent Risk Taking*, 92 Child Dev., no. 2, 2021, at 731, 731 (hereinafter "*Neurobiological Sensitivity*"). Neurobiological development sets the stage for that influence.

A "collection of brain regions often referred to as the social brain" is critical to "enabl[ing] individuals to recognize others and evaluate their thoughts and feelings." Ethan M. McCormick et al., *Functional Connectivity in the Social Brain Across Childhood and Adolescence*, 13 Social Cognitive & Affective Neuroscience, no. 8, 2018, at 819, 819. The "social brain"—which includes a host of regions, including the amygdala, anterior insula, superior temporal sulcus, prefrontal cortex, temporo-parietal junction, anterior temporal poles, and medial prefrontal cortex, *id.* at 819–20—is largely in place by late childhood, *id.* at 827, though developmental refinement continues into adolescence, *see id.*; Sarah-Jayne Blakemore, *Development of the Social Brain During Adolescence*, 61 Q.J. Experimental Psych., no. 1, 2008, at 40, 43, 45.[4]

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[4] Late childhood, also known as "preadolescence," is typically defined as the two-year period before the onset of puberty. *Childhood*, APA Dictionary of Psychology, https://dictionary.apa.org/childhood.

Adolescents not only have well-developed "social brains," they also spend more time with their peers and place a greater emphasis on gaining peer acceptance. Adolescents' focus on their peers places them at greater risk of "conforming to the norms and behaviors of their peer group in an effort to enhance their social belonging." *Neurobiological Sensitivity*, *supra*, at 731. Adolescents show "heightened sensitivity to social evaluation at various levels of complexity." *Sensitivity to Social Evaluation*, *supra*, at 125. They, more than other age groups, experience a drive to gain social rewards (*e.g.*, approval by others) and avoid social punishments (*e.g.*, disapproval by others), thus increasing the likelihood with which they will conform to peer norms. *Neurobiological Sensitivity*, *supra*, at 731.

These two factors—social rewards and social punishments—are so potent that they do not need to be "directly experienced." *Id.* at 732. The "mere threat of peer rejection is enough to limit group deviance and increase adherence to social norms." *Id.* Put simply, the desire to fit in (or conversely, the desire not to be left out) may cause adolescents to engage in behaviors that they think are "encouraged by the peer group." *Id.*

Behavioral research has confirmed as much. One study found that "adolescents demonstrated a greater preference for immediate rewards when with their peers than when alone." Lia O'Brien et al., *Adolescents Prefer More Immediate Rewards when in the Presence of Their Peers*, 21 J. Rsch. on Adolescence, no. 4, 2011, at 747, 747. Another confirmed that although all people of varying ages "took more risks and made more risky decisions in groups than when alone,

this effect was more pronounced during middle and late adolescence than during adulthood." Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 Dev. Psych., no. 4, 2005, at 625, 632. Adolescent athletes—and their classmates—are no exception. They are especially likely to follow the lead of the football coach, and each other, when they are together—as they are, for example, when talking with teammates, classmates, and opponents, singing the school fight song, and preparing to exit the field after a football game.

B. Adolescents' Heightened Neurobiological Sensitivity to Rewards in the Presence of Peers Makes Them Particularly Susceptible to Social Conformity.

Adolescents are more susceptible than adults to outside influences because of the trajectories of brain development discussed above. *See supra* Part I. Adolescents' heightened sensitivity to rewards in combination with immature cognitive control has especially profound effects on their behavioral choices when they are in the presence of their peers.

Researchers have linked the effect of peer presence on adolescents' behavior to adolescents' neurobiological sensitivity to rewards. For example, in one recent neuroimaging study, researchers found that the introduction of peer presence not only "impact[ed] behavior" of adolescents, but also "increased activation of the striatum and anterior insula." *Peers Influence Adolescent Reward Processing*, *supra*, at 293. Because

these regions of the brain are important parts of the brain's "reward-processing circuitry," the finding indicates that the presence of peers "heighten[s] the salience of anticipated rewards" in adolescents. *Id.* Moreover, the heightened activation of the ventral striatum and orbitofrontal cortex in adolescents' brains when adolescents are "aware that their friends [are] watching them" is especially stark relative to activation patterns in adult brains. *Peers Increase Adolescent Risk Taking*, *supra*, at F7.[5] As a result of studies like these, "few scholars now dispute that adolescence is a period of peak neurobehavioral sensitivity to social stimuli." *The Teenage Brain*, *supra*, at 115.

The following brain scans are typical of the results of these neuroimaging studies. They show how activation of the reward-processing regions of the adolescent brain (outlined in yellow in the figure) increases when peers observe their behavior:

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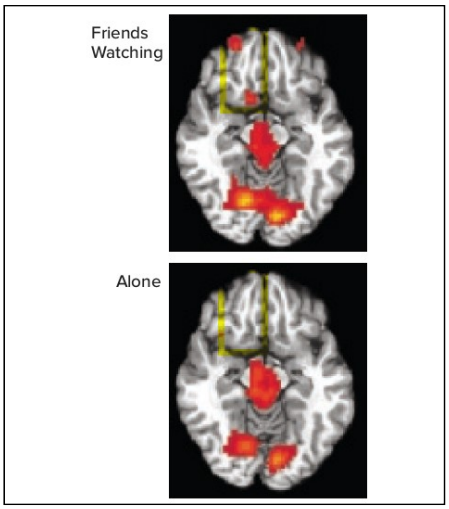
[5] Although many of these studies aimed to understand why adolescents engage in risky behavior, their findings are not limited to that context. Indeed, one recent neuroimaging study "examine[d] age differences in neural engagement during peer observation when participants perform a reward-processing task that involves no risk taking"—that is, a task in which no course of action is "inherently more 'safe' or more 'dangerous.'" Ashley R. Smith et al., *Age Differences in the Impact of Peers on Adolescents' and Adults' Neural Response to Reward*, 11 Dev. Cognitive Neuroscience 75, 76 (2015). The brain scans "revealed that, compared to adults, adolescents exhibited greater engagement of the [ventrial striatum]"—again, a key component of the brain's reward-processing system—"during receipt of reward when their peers were watching" than when they were not. *Id.* at 80. That finding began to "disentangle reward sensitivity from other aspects of risky decision-making that may engage overlapping brain circuitry." *Id.* at 81.



Adolescence, *supra*, at 248 (citing *Peers Increase Adolescent Risk Taking*, *supra*).

Further research has revealed how the additive effect of peer presence on adolescent reward sensitivity, like reward sensitivity itself, is the result of neurobiological phenomena. For example, peer presence affects behavior in adolescent mice just as it does in adolescent humans, suggesting that "human adolescent reward-seeking may reflect a hard-wired, evolutionary conserved process through which the presence of agemates increases individuals' sensitivity to potential rewards in their immediate environment." Sheree Logue et al., *Adolescent Mice, Unlike Adults, Consume More Alcohol in the Presence of Peers Than Alone*, 17 Dev. Sci., no. 1, 2014, at 79, 79. And "sensation seeking is higher during middle and late adolescence than before or after" worldwide, consistent with neurobiological findings. *Around the World*, *supra*, at 11.

Peer presence also further diminishes adolescents' already weak ability to resist their predisposition to

seek rewards. Recent neuroimaging work shows that adolescents experience "diminished cognitive control when presented with positive social cues in a rewarding context and in the presence of peers relative to when alone," suggesting that "diminished cognitive control under contextually exciting and rewarding conditions may be exacerbated or amplified by the presence of a peer in teens." *Combined Effects*, *supra*, at 298 (citations omitted). The effect may be especially strong "in the context of 'triple arousal' (i.e., peers, rewards, and social cues)." *Id.*

Adolescents may be especially powerless to resist this peer presence effect when forced to make decisions under time pressure. Recent work points towards an adolescent "maturity gap" that turns on whether a particular situation calls for "hot cognition" or "cold cognition." Hot cognition includes both "impulse control" and "resistance to peer influence," and is used in "affectively charged situations where deliberation is unlikely or difficult." *Adolescents' Cognitive Capacity*, *supra*, at 71. Cold cognition, on the other hand, is "employed in situations calling for deliberation in the absence of high levels of emotion." *Id.* While "cold cognition . . . reaches adult levels during the midteen years," "hot cognition" "tend[s] to reach adult levels into adulthood." *Id.* at 79. Thus, among other factors, "pressure to decide quickly," particularly in the absence of "adult consultants," may "quickly intensif[y] the affective arousal of a situation," increasing adolescents' tendency to chase rewards when peers are watching. *Id.* at 71, 82.

The decision to join a coach in prayer during chaotic postgame festivities is a classic example of hot cognition. Players have no time to consult with adult

advisers, and must decide quickly, lest they lose their opportunity to reap reward—especially if the prayer is brief. And as this case shows, postgame prayer may involve an especially charged environment. *See, e.g.*, JA 181 ("At the conclusion of the game on October 16, a large number of people came on to the field, some to pray with Mr. Kennedy. There were people jumping the fence and others running among the cheerleaders, band and players. Afterwards, the District received complaints from parents of band members who were knocked over in the rush of spectators on to the field."); JA 347 (describing "fans, strangers, and media rushing on to the field after a game to where Mr. Kennedy was going to pray"); JA 82 (photograph of October 16, 2015 postgame prayer in which players, community members, and media members with cameras surround a praying Coach Kennedy). In that sort of environment, an adolescent athlete is especially likely to follow his reward-seeking instincts and join his coach in prayer.

C. Adherence to Team-Sport Identity Amplifies Already-Existing Influences of Social Conformity Among Teammates.

While adolescents' drive for social acceptance and neurobiological development make them especially likely to conform to the actions of their peers generally, the risk of conformity is even greater in the context of team sports. High school sports teams offer adolescents an important social context for peer interactions and a key source of personal identity.

Team membership offers a canonical example of this phenomenon along two different dimensions:

cliques and crowds. Cliques—or small groups of same-age and same-sex peers, such as a group of football players—"provide[] the main social context in which adolescents interact with one another." Adolescence, *supra*, at 127–28. That social context is important, because it offers adolescents an environment especially rich in social rewards. "Adolescents' moods are most positive when they are with their friends" and "time spent with friends becomes more rewarding over the course of adolescence." *Id.* at 122. In short, "[p]eer relations are never more salient than in adolescence." *The Teenage Brain*, *supra*, at 116. And sure enough, adolescents "assign the greatest priority to peer norms for behavior." *Id.*

Just as critically, a high school football team may also represent a "crowd"—*i.e.*, a "reputation based cluster[] of youths" that "help[s] solidify young people's social and personal identity" and confers "important influence on [the youth's] behavior, activities, and opinions about others." Adolescence, *supra*, at 128, 132 (internal quotation marks omitted) (quoting B. Bradford Brown & James Larson, *Peer Relationships in Adolescents*, *in* 2 Handbook of Adolescent Psychology, Contextual Influences on Adolescent Development 74, 85 (Richard Lerner and Laurence Steinberg eds. 2009)). Classic examples of a crowd include "nerds," "populars," and—most salient here—"jocks." Adolescence, *supra*, at 128. Indeed, as members of the "jocks" crowd, high school football players are often able to establish certain "social norms—that is, values and expectations—that members" of the crowd "strive to follow." *Id.* at 132. And when players "behave in ways that are consistent with these norms, they are

reinforced"—that is, they are rewarded by fellow crowd members for doing so. *Id.*

Whether considered a "clique" or "crowd" (or both), the team, and the sense of identity it conveys, underscore the heightened influence that peers—and more specifically, teammates—have on one another. In one study, "athletes whose sense of self-concept was more closely tied to sport team membership . . . were more readily shaped by teammate influence." Scott A. Graupensperger, et al., *Everyone Else Is Doing It: The Association Between Social Identity and Susceptibility to Peer Influence in NCAA Athletes*, 40 J. Sport & Exercise Psych., no. 3, 2018, at 117, 123. And those "athletes with strong social identities [in team membership] altered their anticipated behavior to fit what they believed to be stereotypical behaviors of the group"—regardless of whether they were shown "bogus normative behaviors of teammates." *Id.* In other words, the "preexisting standards" or "values that teams identify around" are likely to "influence behavior." *Id.*

Petitioner's actions contributed substantially to the peer pressure placed on student athletes. When Petitioner did *not* visibly pray, none of his players did, either. JA 181. But when Petitioner did pray publicly, a *majority* of the team would join, whether "to avoid being separated from the rest of the team or to ensure playing time." Pet. App. 136; *see also* JA 126, JA 149, JA 169, JA 186, JA 356. That some players "did not feel comfortable declining to join with the other players in Mr. Kennedy's prayers," JA 359, underscores that the stated or unstated social norms of the team, such as joining the coach in prayer, were norms that the individual members of the team

"strive[d] to follow." And, more critically, in following those social norms, the student athletes were rewarded for their conformity.

Petitioner is just as responsible for the indirect coercive effect facilitated by these peer-to-peer dynamics as he is for the direct coercive effects of his public postgame prayers. He set the tone for the team, and the natural and expected result of his prayers was the domino effect that in fact followed them. Some players—perhaps including those concerned about their playing time, Pet. App. 71, 136—succumbed to the direct pressure created by Petitioner's actions. And once they did, others were compelled to join in to adhere to the team norm Petitioner had successfully catalyzed.

CONCLUSION

Petitioner's actions—coupled with the student athletes' behavioral and neurobiological predisposition to fit in with their peers and their team—created pressure to which adolescent student athletes would likely succumb, even if doing so were contrary to their own beliefs and even if the pressure was never explicit. The lower courts thus correctly concluded that Petitioner's postgame prayers at high school football games violated the Establishment Clause because they coerced students to participate in acts of religious worship. The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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April 1, 2022