

No. 24-1261

In the Supreme Court of the United States

CAMBRIDGE CHRISTIAN SCHOOLS, INC.,
Petitioner,

v.

FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC.,
Respondent

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

**BRIEF OF *AMICUS CURIAE* THE AMERICAN LEGION
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The American Legion is one of the nation’s oldest and most respected veterans’ service organizations. Since 1919, the American Legion has demonstrated an enduring commitment to fostering patriotism, civic engagement, and the values upon which the United States was founded. Among its core values, the Legion sponsors youth programs that teach the rights, privileges, and responsibilities of citizenship; advocates for upholding and defending the Constitution; and honors veterans by paying perpetual respect for all past military sacrifices to ensure they are never forgotten by new generations. The Legion promotes these civic values in numerous ways, including by organizing memorial services and maintaining veterans’ monuments across the country.

Many of these activities and memorials incorporate religious imagery and expression, and the American Legion has been steadfast in defending them against legal challenges in this and other Courts. Among other cases, the Legion successfully argued that the Bladensburg Peace Cross—a memorial to soldiers lost in the First World War—does not constitute an establishment of religion in violation of the First Amendment. *See American Legion v. American Humanist Ass’n*, 588 U.S. 29 (2019). The Legion also supported a high school football coach’s First Amendment right to pray on the field in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022).

¹ Under Rule 37.2, amicus provided timely notice of its intention to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution to its preparation or submission.

The American Legion urges this Court to grant the petition for a writ of certiorari in this case to preserve civic ceremonies that sometimes incorporate private religious expression—particularly when honoring those who gave the last full measure of devotion to this country. Local governments’ perennial litigation against religious expression not only threatens to limit the role of religion in important American traditions; it signals intolerance towards citizens’ religious faith. As *amicus curiae*, the Legion has an interest in ensuring States recognize the significance of their citizens’ faiths and protect citizens’ rights to religious expression in the public sphere.

SUMMARY OF ARGUMENT

The American Legion, since its founding in 1919, has played a central role in American civic life, blending patriotic service with a longstanding tradition of religious expression. Its mission, as outlined in its federal charter and constitution, emphasizes service to veterans, communities, and the nation, with a particular focus on upholding constitutional freedoms, including religious liberty. The Legion’s activities—commemoration events, public monument dedications, community service initiatives, support for chaplaincy services, and civic education programs, among many more—regularly incorporate some religious elements such as prayers, hymns, invocations, and benedictions. These practices are rooted in our nation’s history and tradition, and they are vital expressions of the values and beliefs of many Americans, especially veterans and their families.

The Eleventh Circuit’s recent decision significantly expands the government-speech doctrine and thereby threatens those civic and religious traditions. By treating private religious expression at public events as government speech, the decision below risks suppressing or

chilling such expression and undermining the historical partnership between veterans' organizations and public institutions. The opinion also distorts the First Amendment's Religion and Free Speech Clauses, potentially countenancing the wholesale exclusion of religious content from public ceremonies, memorials, and educational programs. If other state and local governments were permitted to adopt the same anti-religion attitude that prevailed in the court of appeals here, then American culture and civic life would suffer. Veterans, for example, would be forced to censor their appeals to God when honoring their fallen comrades from a public dais.

The court of appeals fundamentally erred by incorrectly classifying private religious expression—prayers offered by a private individual at a public event—as government speech, despite the absence of any government control or authorship over the message. Properly understood, this is not a government-speech case, and this Court should grant the petition to correct the Eleventh Circuit's misunderstanding of this Court's "holistic" test for cases like this one. *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022). The Eleventh Circuit neglected to consider the broader historical context of religious speech at public events, the clear private identity of the speaker here, and the lack of government involvement in shaping the message. The court's analysis not only confuses the government-speech doctrine but risks reviving the much-maligned and now firmly buried *Lemon* test, leading to unwarranted suppression of religious expression in public forums. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

This Court should grant the petition to make even more clear that allowing *private* individuals to offer prayers at public events does not violate the Establishment Clause. Doing so would respect this Court's longstanding

precedent and American tradition, and prevent erosion of First Amendment protections for religious speech.

ARGUMENT

A. The American Legion has a long tradition of civic engagement and religious expression.

1. The American Legion’s founding principles and civic mission reflect its enduring commitment to constitutional freedoms.

The American Legion, chartered by Congress in 1919, stands as one of the nation’s most prominent and enduring civic organizations. See Federal Reserve Act, ch. 59, § 3, 41 Stat. 285 (1919); Pub. L. No. 105-225, § 21701, 112 Stat. 1253 (1998); American Legion, *History of the American Legion*.² From its inception, the American Legion has understood its role as much more than a veterans’ organization. The Legion’s federal charter, codified at 36 U.S.C. § 21701, charges it with upholding and defending the Constitution, promoting peace and good will, preserving the memories and incidents of the nation’s wars, and encouraging mutual helpfulness and service to country. 36 U.S.C. § 21701. The preamble to the Legion’s constitution captures this ethos: “For God and Country we associate ourselves together for [these] purposes.” American Legion, *Preamble to the Constitution*.³

Those purposes are not abstract ideals; they are realized through concrete programs and public ceremonies that bring together Americans of all backgrounds in the shared work of civic life. With more than 1.6 million members and over 12,000 local posts worldwide, the American

² <https://www.legion.org/about/organization/history>.

³ <https://www.legion.org/about/organization/preamble>.

Legion's mission has always been rooted in service—to veterans, communities, and the nation as a whole. Central to this mission is a deep commitment to the values of citizenship, patriotism, and constitutional freedoms.

Among these freedoms, the right to religious expression has always held a special place in the Legion's activities and traditions. Those expressions—encompassing a wide range of religious belief systems—reflect the understanding that faith is not a purely private matter but a source of strength, comfort, and moral guidance for many Americans, especially for many of those who have served in the armed forces and their families.

2. The American Legion's programs reflect civic engagement rooted in tradition and steeped in religious exercise.

The American Legion carries out its commitment to civic engagement through a wide array of programs that reach millions of Americans each year. These are enormously valuable events that bring communities together. They give comfort to grieving families, or teach future generations to embrace love of country and neighbor.

Because of the nature of the Legion's events, they often involve private expressions of religious belief in public settings. Some examples include:

Commemorative Events. The American Legion is a leading sponsor of military funerals, war memorials, and similar commemorative ceremonies across the country, many of which thoughtfully incorporate religious elements to honor the profound role of faith in the lives of servicemembers and their families. Prayers, hymns, and religious readings are longstanding features at these events, serving to solemnize occasions where the Legion pays tribute to those who have served or fallen, as well as

to their loved ones. See, *e.g.*, The American Legion, *2024 Officer's Guide and Manual of Ceremonies*.⁴

These traditions are especially evident during major civic observances such as the Fourth of July, Memorial Day, Veterans Day, POW and MIA Recognition Day, and flag retirement ceremonies. Earlier this year, for example, Springfield American Legion Post 32 hosted the 91st Annual American Legion National Pilgrimage to President Lincoln's tomb—a ceremony that celebrates President Lincoln, veterans, freedom, and country. The ceremony's opening remarks echoed Lincoln's own words: "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up our nation's wounds... ." The ceremony concluded with a call to "Honor the Soldier and Sailor everywhere ... Honor also the citizen who cares for his brother in the field ... Honor to him, only less than to him, who braves, for the common good, the storms of heaven and the storms of battle." Similarly, during a 2024 D-Day remembrance ceremony honoring Theodore Roosevelt Jr., American Legion National Commander Daniel J. Seehafer invoked the words of Scripture, reflecting that Roosevelt Jr. had demonstrated, by his life, the truth that "Greater love hath no man than this, that a man lay down his life for his friends." John 15:13 (KJV). See American Legion, 'Statue of Liberation' Presented to New Orleans Foundation (Aug. 28, 2024).⁵

⁴ https://archive.legion.org/_flysystem/fedora/2024-03/aa011597.pdf (describing standards for prayer during American Legion events).

⁵ <https://www.legion.org/information-center/news/convention/2024/august/statue-of-liberation-presented-to-new-orleans-foundation#:~:text=Mere%2DEnglish,would%20be%20proud%20of%20this.%E2%80%9D>.

At events like these, American Legion officers (including the National Commander, State Commanders, and Judge Advocates) frequently join elected officials—from local mayors to governors to members of Congress and the President of the United States—in offering prayers, leading anthems, performing rifle salutes, and laying wreaths. These ceremonies, often held at cemeteries, memorials, or war monuments, are often conducted with open microphones for all to hear, and sometimes receive coverage from local news and media outlets. See, *e.g.*, Jeff Stoffer, *500 Festival Memorial Service: A Pause to Reflect* (May 23, 2025);⁶ American Legion, *Memorial Day with the American Legion Family* (June 1, 2023) (listing notable public figures);⁷ *Congressman Van Orden attends West Salem’s Memorial Day service* (May 27, 2024);⁸ Senator Ruben Gallego, FACEBOOK (May 26, 2025).⁹

Public Monument Dedications. The American Legion has long played a pivotal role in the stewardship and dedication of public monuments that incorporate religious imagery or inscriptions, such as crosses or Biblical references, on government property. See, *e.g.*, *Rededication of a Vietnam Veterans Memorial in Des Moines, Iowa*.¹⁰ Currently the Legion is actively preparing for the upcoming centennial celebration of the Bladensburg Peace

⁶ Available at <https://www.legion.org>.

⁷ *Ibid.*

⁸ <https://vanorden.house.gov/media/in-the-news/wkbt-congressman-van-orden-attends-west-salems-memorial-day-service>.

⁹ <https://www.facebook.com/SenRubenGallego/posts/honored-to-spend-memorial-day-at-my-own-post-american-legion-post-41-with-gold-s/1263357725154367/> (last visited July 9, 2025).

¹⁰ <https://dva.iowa.gov/events/iowa-vietnam-veterans-recognition-day> (last visited July 9, 2025).

Cross memorial in Maryland—an event that will prominently feature religious elements as part of its commemoration. See American Legion, *Peace Cross*.¹¹

This tradition is not unique to places like Bladensburg. National ceremonies—such as the dedication of the Wall of Remembrance at the National Korean War Veterans Memorial—have historically begun with invocations and concluded with the singing of “God Bless America,” underscoring the integration of faith into the public remembrance of national sacrifice. Nearly all such ceremonies include some references to God, the Creator, or faith, reflecting the deeply held beliefs of many participants and the rich historical tradition of these observances.

Community Service and Support for Veterans. In its service to veterans and their families, the American Legion recognizes that spiritual well-being is a vital component of overall health. The organization actively supports chaplaincy services in VA hospitals and at Legion posts, and is dedicated to destigmatizing mental health support, providing peer-to-peer resources, and working to end veteran suicide. See, e.g., American Legion, *Legion Outlines Support for Mental Health Legislation in Statement for the Record* (Apr. 29, 2025) (describing the Legion’s “Be the One” initiative).¹² Private religious expression is an integral part of this mission: the Legion draws on both explicit and implicit religious messages to foster hope and resilience among its members, veterans, and their families.

The Legion also sponsors the American Legion Legacy Run, which since 2006 has raised \$16 million dollars

¹¹ <https://www.legion.org/memorials/united-states/maryland/united-states-maryland-peace-cross>.

¹² Available at <https://www.legion.org/>.

for a scholarship fund supporting children who lost a parent in active military service on or after 9/11. See American Legion, *2025 American Legion Legacy Run*.¹³ And Legion members are deeply involved in the Department of Veterans Affairs Voluntary Service program, with 7,000 volunteers contributing 900,000 hours annually at hospitals across the country. American Legion, *VA Volunteer Services*.¹⁴ Each of these events is typically infused with some amount of religious language.

Spiritual Leadership and the Role of Chaplains. Chaplains hold key positions within the American Legion, serving as spiritual guides whose purpose is to “help persons grow in their relationship with God and with another.” American Legion, *American Legion Chaplains*.¹⁵ The American Legion chaplaincy is intentionally non-denominational and non-sectarian, ensuring that all members, regardless of faith tradition, can find support and comfort. The Chaplain’s Handbook provides guidance for this inclusive ministry, emphasizing service to the entire veteran community. The American Legion, *Chaplain’s Handbook: Service to God and Country*.¹⁶

The Legion’s commitment to spiritual leadership is also reflected in its public recognition and ceremonies. For example, the organization has honored civic leaders,

¹³ <https://www.legion.org/get-involved/community-programs/american-legion-riders/the-american-legion-legacy-run> (last visited July 9, 2025).

¹⁴ <https://www.legion.org/get-involved/community-programs/volunteering/va-volunteer-services>.

¹⁵ <https://www.legion.org/information-center/honor-remembrance/american-legion-chaplains>.

¹⁶ <https://www.ohiolegion.com/wp-content/uploads/Chaplains-Handbook.pdf>.

such as a Cleveland mayor, with the Four Chaplains Award, and local posts regularly host Four Chaplains Day ceremonies. See, *e.g.*, Emily Canning-Dean, *Medina's American Legion honors Mayor Hanwell with Four Chaplains Award*, Cleveland Community News (Sept. 3, 2024).¹⁷ This event commemorates the heroic sacrifice of four military chaplains who gave their life-preserver vests to others during the sinking of the USAT *Dorchester* in World War II. American Legion, *Four Chaplains Day*.¹⁸ The ceremonies are similarly open to the public and often feature guests speaking from microphones and/or broadcast over loudspeakers. See, *e.g.*, *American Legion National Commander Honors Four Chaplains in Florida*, YOUTUBE (Jan. 30, 2024);¹⁹ Matt Grills, *Georgia Post Invites Public to Inaugural Four Chaplains Day Program* (Jan. 30, 2025).²⁰

At the national level, the American Legion's spiritual leadership is further highlighted by the participation of the National Chaplain, who, for example, presented at the 105th American Legion Convention. Jeff Stoffer, *National Chaplain: 'God is Calling You to be the One'* (Aug. 25, 2024).²¹ During his address, the National Chaplain recited Old Testament scripture and focused on the urgent mission of preventing veteran suicide. See *ibid.*

Civic Education. Another of the Legion's signature initiatives are the Boys State and Girls State programs,

¹⁷ <https://www.cleveland.com/community/2024/09/medinas-american-legion-honors-dennis-hanwell-with-four-chaplains-award.html>.

¹⁸ <https://www.legion.org/getmedia/8474d806-07ab-4638-be52-710cf8d16d37/60mag0120-four-chaplains-brochure-0.pdf>.

¹⁹ <https://www.youtube.com/watch?v=gn4BysYb5X8>.

²⁰ Available at <https://www.legion.org>.

²¹ *Ibid.*

which operate in all but one state and are often held on public property such as state university campuses or National Guard facilities. Boys State and Girls State teach high school students about the rights, privileges, and responsibilities of citizenship through hands-on participation in mock government. Religious expression is a regular and respected part of these programs. Daily invocations and benedictions—often led by volunteer chaplains or participants—are a staple, as are non-denominational religious services, open to all and attended voluntarily. Sitting state officials, including governors and judges, frequently participate in Boys State and Girls State events that include prayers or religious observances, underscoring the integration of faith and civic responsibility. See American Legion, *About Boys State & Boys Nation*,²² American Legion Auxiliary, *ALA Girls State*.²³

*

Events organized or supported by the American Legion have been woven into the fabric of the nation's public culture, reflecting a longstanding tradition in which civic organizations collaborate with local communities, state governments, and even Congress to commemorate significant occasions. Whether honoring veterans, memorializing the fallen, or fostering civic education among youth, the Legion's activities exemplify the enduring partnership between voluntary associations and public institutions that has shaped and enriched America's civic landscape. The Legion's century of experience illustrates that religious expression is not a source of division, but

²² <https://www.legion.org/get-involved/youth-programs/boys-state-boys-nation/about-boys-state-boys-nation>.

²³ <https://www.legion-aux.org/ala-girls-state>.

rather a powerful means of fostering unity and shared community purpose. Through its events and programs, the Legion brings people together to honor America and those who have served it, fostering mutual respect and understanding. The presence of prayer or religious observances at these types of public events is not an imposition, but an acknowledgment of the role that faith plays in the lives of many Americans—especially during moments of remembrance, mourning, or national reflection.

This Court should grant certiorari in this case to preserve these vital American traditions, which the decision below threatens to diminish. Granting certiorari and reversing will help ensure that the nation’s public life remains open to the full range of private expression—religious or otherwise—that has always characterized the American way.

B. The decision below threatens the American Legion’s valuable civic traditions.

The Legion’s experience offers a powerful lens to view the dangers posed by the decision below. The Eleventh Circuit’s sweeping expansion of what qualifies as government speech threatens to upend the careful balance struck by the First Amendment’s Establishment, Free Speech, and Free Exercise Clauses. Rather than recognize the Clauses as complementary guarantees of liberty, the court of appeals pitted the First Amendment against itself, with the Establishment Clause weaponized to suppress, rather than protect, religious expression. If left uncorrected, that approach will chill religious and other private expression at public events, undermine the historical role of veterans’ organizations in shaping national identity, and erode the pluralism and inclusivity that are the hallmarks of American civic life.

The decision below jeopardizes private appeals to God in public ceremonies. For generations, American Legion posts and other veterans' organizations have participated in public ceremonies—Memorial Day, Veterans Day, military funerals, state-sponsored memorials, school assemblies, and more. Because those ceremonies often focus on honoring service and sacrifice, the private persons who speak at them have regularly said prayers, offered invocations, or made other appeals to God or heaven. Under the Eleventh Circuit's rule, however, government officials could prohibit such private religious expressions simply by declaring (implausibly) that everything said from the podium is government speech. They could thereby extinguish the traditions by which veterans and their sacrifices have historically been honored. But these events are not mere government productions; they are *community* gatherings where the voices of veterans and their organizations are expected and valued.

The decision below provides a ready-made justification for local governments to dictate that, if a veterans' group wishes to participate in a public ceremony using a government-provided microphone or platform, it must refrain from any mention of God or religious sentiment. Local government officials could claim—under the guise of avoiding “endorsement” of religion—that because the event is on public property or uses public resources, all speech is attributable to the government and thus subject to censorship. This would allow government to single out and suppress religious speech, even while permitting a wide range of secular messages from private participants. The result in some jurisdictions would be to put veterans' organizations to a choice between participating in civic life and remaining true to their traditions and beliefs.

Deterring veterans' groups from participating in public events—because of the risk that their private remarks with religious content will be censored or recharacterized as government speech—would imperil civic engagement. Veterans' organizations are often the bearers of stories, values, and traditions that enrich public life. Discouraging their participation impoverishes our communities.

The decision below threatens monument dedications sponsored by veterans' groups. The American Legion has played a central role in sponsoring and maintaining countless war memorials and monuments, which have nearly always included some religious elements as a matter of tradition and respect. Crucially, such memorials and monuments are not government impositions of faith, but expressions of the communities and individuals who created them. This case involves the same type of private religious expression in a public setting: Petitioners asked to offer a prayer for themselves and anyone else wishing to participate; no one could have seriously thought the prayer was being offered *by the State*.

The Eleventh Circuit's expansive interpretation of the government-speech doctrine creates a significant risk that religious symbols, inscriptions, or speech used at memorial ceremonies like the American Legion's dedications could be subject to challenge. This chilling effect would diminish the richness and authenticity of these public commemorations, dissuading veterans' groups from fully participating in the creation and dedication of new monuments as they historically have.

The threat extends to the very process of planning and conducting these ceremonies. Local officials, fearing liability or accusations of "endorsement," may preemptively bar any religious content from dedication speeches, even when offered by private citizens or organizations. Veter-

ans' groups may be told that their participation is contingent on omitting the very words and symbols that have defined their commemorative practices for generations. Such a sanitized and secularized version of public remembrance would fail to reflect the true diversity and depth of the communities involved.

The decision's reach could be expansive. Countless public events involving veterans' organizations are not strictly government events—they are community gatherings where the government provides a platform, such as a public park or school auditorium, for a range of private speakers. Accordingly, the Eleventh Circuit's decision does not affect the Legion alone; it also impacts other veterans' organizations—including the Veterans of Foreign Wars, the Wounded Warrior Project, and numerous smaller groups nationwide—that likewise use such forums to honor servicemembers and frequently fold religious language into their tributes.

Under the decision below, if a local school district invites the American Legion—or a non-veterans group like the Knights of Columbus, a Catholic men's fraternal organization dedicated to charity, unity, and patriotism—to offer a flag presentation or invocation at a school event, the district may suppress any religious expressions, thereby chilling these groups' advocacy and community engagement (entirely contrary to historical practice). The opinion's logic could similarly allow the exclusion of veterans' chaplain invocations or ceremonial prayers from any event loosely associated with government facilities—a radical reworking that impairs long-standing tradition. In short, the opinion could compel organizations like the American Legion to secularize and change their identities to participate in public events.

By treating all speech at such events as government speech, officials who are hostile to religion may feel emboldened to enforce a blanket ban on religious references, even when the event is otherwise open to a variety of private speakers. That not only distorts the nature of the event—transforming it from a community gathering into a government-scripted production—but also signals to veterans and their families that their beliefs and traditions are unwelcome.

The decision below undercuts veterans' sacrifices. Many veterans have fought and died to defend the same freedoms of speech and religion at stake in this case. Silencing their voices at public events dishonors their service and the constitutional values they defended. The American Legion's participation in public ceremonies is a living testament to the First Amendment's guarantee that all Americans—including those who have served—may speak freely and according to conscience in the public square. Allowing only non-religious, government-authored speech at public ceremonies trivializes the experience of generations of veterans, who have historically deployed both religious and secular means to honor their fallen comrades and give voice to those who have sacrificed. Excluding any mention of God from such events is unreasonable and ignores the reality that these prayers are *citizen* speech—not government speech.

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Absent review, the decision below will likely embolden government actors to censor religious expressions by claiming government speech, undermining the pluralism and inclusivity that the First Amendment is designed to protect. The American Legion urges this Court to grant certiorari to prevent erosion of the traditions by which a grateful nation recognizes its veterans. The Eleventh Cir-

cuit’s decision, if left unchecked, will chill religious and patriotic expression at the heart of civic life. This Court’s intervention is necessary to preserve the space for private, voluntary religious expression, consistent with the First Amendment and the nation’s history.

C. The decision below is incorrect.

The Eleventh Circuit erred in treating private religious expression at public events as government speech. This Court should clarify that a *private* speaker’s appeals to God or faith are not transformed into government speech merely because the government organized the event. This case thus provides a valuable opportunity for this Court to guide the lower courts in applying the “holistic” test set forth in this Court’s precedent. *Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022). It is also important for this Court to grant the petition for a writ of certiorari to ensure that lower courts do not revive *Lemon v. Kurtzman*, 403 U.S. 602 (1971), when applying the government-speech doctrine.

1. Cambridge Christian School’s prayers are not government speech.

The Eleventh Circuit treated this dispute as a government-speech case, but that was error. To start, there was no government action triggering the government-speech doctrine. The lower court should have focused “on the identity of the speaker.” *Shurtleff*, 596 U.S. at 263 (Alito, J., concurring). Cambridge Christian School’s (CCS) prayers were not “formulated by a person with the power to determine what messages the government will communicate.” *Id.* at 268. The Florida High School Athletic Association (FHSAA) never “set the overall message to be communicated” through official action. *Ibid.* (cleaned up). CCS’s prayers thus are not government speech.

The Eleventh Circuit failed to heed the warning that courts “must be very careful when a government claims that speech by one or more private speakers is actually government speech.” *Shurtleff*, 596 U.S. at 262. In some cases, “it can be difficult to tell whether the government is using the doctrine as a subterfuge for favoring certain private speakers over others based on viewpoint.” *Ibid.* (cleaned up). Here, however, it is plain that the FHSAA disfavored religious speech. As in other cases that have come before this Court, “[t]his dispute arose only because of a government official’s mistaken understanding of the Establishment Clause.” *Id.* at 261 (Kavanaugh, J. concurring). The FHSAA incorrectly believed that allowing CCS to offer a short prayer would violate the First Amendment, so it precluded CCS’s speech *because of its content*. On several occasions, this Court has “rejected the position that the Establishment Clause even justifies, much less requires, a refusal to extend free speech rights to religious speakers who participate in broad-reaching government programs neutral in design.” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 839 (1995); see, e.g., *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112 (2001); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993). In fact, excluding religious speech is a “denial of the right of free speech” indicating “hostility to religion” that would “undermine the very neutrality the Establishment Clause requires.” *Rosenberger*, 515 U.S. at 845-846; see *Shurtleff*, 596 U.S. at 273-274 (Alito, J., concurring).

Regardless whether the government-speech doctrine applies in this case, the Eleventh Circuit’s decision misunderstood this Court’s precedent. Courts should conduct “a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression.” *Shurtleff*, 596 U.S. at 252; see *Walker v.*

Texas Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 209 (2015); *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009). And while that inquiry should not be “mechanical,” this Court’s “past cases have looked to several types of evidence to guide the analysis, including: the history of the expression at issue; the public’s likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression.” *Shurtleff*, 596 U.S. at 252. This Court should grant review to explain how the Eleventh Circuit failed to conduct a holistic inquiry that correctly accounted for these three factors.

When considering the history factor, the Eleventh Circuit myopically focused on the history of the FHSAA’s program at championship football games, instead of considering the broader history of religious speech at state-sponsored sporting events—or even CCS’s history of offering prayers before its football games. See Pet. App. 35a (“[W]e will focus our government speech inquiry primarily on pregame speech over the PA system at FHSAA football championship games, as opposed to speech at any other game, sport, or period of the championship game.”). That inquiry was far from “holistic.” *Shurtleff*, 596 U.S. at 252. And it did not reflect this Court’s own analysis in similar cases. See *id.* at 253-255 (considering “the history of flag flying”); *Walker*, 576 U.S. at 210-211 (considering the “history of license plates”); *Summum*, 555 U.S. at 470 (considering the history of monuments since “ancient times”). Taking such a narrow view, the lower court (unsurprisingly) could identify only “one example” of a “private speaker using the PA system for a pregame message.” Pet. App. 37a. The court’s incomplete analysis distorted the First Amendment’s protection.

In considering the public’s perception of the speech, the court of appeals again failed to adequately weigh the fact that a *CCS representative*—not any government employee—would have provided the prayer. No reasonable listener could have confused a prayer offered by a CCS representative with the FHSAA’s official speech. Especially given the record evidence that FHSAA allowed multiple other private speakers to use the stadium public address system for other private purposes, including advertising. See Pet. App. 42a. That should have been sufficient to resolve the government-speech issue. See *Shurtleff*, 596 U.S. at 263 (Alito, J., concurring).

The Eleventh Circuit’s analysis under the factor regarding governmental control over the messaging did not adequately account for the fact that CCS would have prepared and offered the prayer without direction or scripting from FHSAA. That fact differentiates this case from some of this Court’s other prayer cases, including *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), which disallowed prayer over the school’s public address system before football games when the state was involved “in the selection of the speaker,” implemented a policy permitting “only those messages deemed ‘appropriate’” by state officials, and “suggest[ed] that a solemn, yet nonreligious, message ... would be prohibited.” *Id.* at 304, 306. It also distinguishes this case from *Lee v. Weisman*, 505 U.S. 577, 581 (1992), where the Court disallowed prayer at a high school graduation in part because the state provided “Guidelines” recommending that the prayer be “nonsectarian.”

Lee and *Santa Fe* were applications of *Lemon*, which this Court has already (rightfully) discarded as inconsistent with the history and tradition of the Establishment Clause. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S.

507, 535 (2022). But this Court need not revisit any Establishment Clause precedents to resolve this case. Instead, the Court should grant the petition to provide more guidance about when and how the government-speech doctrine applies. The Eleventh Circuit’s conclusion that a private school representative’s unscripted prayers are government speech reveals the confusion in this important area of the law.

2. The Eleventh Circuit’s decision improperly revives *Lemon*.

The record shows that FHSAA denied CCS’s request to use the stadium loudspeaker for a brief pregame prayer in 2015 because it feared violating the Court’s Establishment Clause decision in *Santa Fe*. But in that case, this Court applied “the most rigid version” of the now defunct *Lemon* test. *Santa Fe*, 530 U.S. at 319 (Rehnquist, C.J., dissenting). And the Court’s decision “bristle[d] with hostility to all things religious in public life.” *Id.* at 318. The decision is incompatible with this Court’s modern Establishment Clause jurisprudence. And yet, through the Eleventh Circuit’s incorrect application of the government-speech doctrine, *Lemon* will “shuffle from its grave” any time a state administrator decides that a private person’s religious speech at a public event would inappropriately create an establishment of religion. *Shurtleff*, 596 U.S. at 285 (Gorsuch, J., concurring).

The Court should grant the petition and take the opportunity to make clear that allowing private persons to invoke religious language at public events does not violate the Establishment Clause. The First Amendment “does not say that in every and all respects there shall be a separation of Church and State.” *Zorach v. Clauson*, 343 U.S. 306, 312-313 (1952). On the contrary, this Court has long recognized that Americans “are a religious people

whose institutions presuppose a Supreme Being.” *Id.* at 313-314. Even today, more “than 6 in 10 think a coach leading a team in prayer, a player leading a team in prayer, or a coach praying on the field without asking the team to join in should all be allowed at public high school sporting events.” AP-NORC, *The public’s opinion on religion in sports* (Sept. 29, 2022).²⁴ Far from violating the Establishment Clause, state administrators follow “the best of our traditions” when they “encourage religious instruction or cooperate with religious authorities by adjusting the schedule of public events to sectarian needs.” *Zorach*, 343 U.S. at 313-314 (cleaned up).

Especially in its recent jurisprudence, this Court has reaffirmed that religious language and symbols at public events and in public places do not violate the Establishment Clause—no matter “whether those expressions take place in a sanctuary or on a field.” *Kennedy*, 597 U.S. at 543 (football coach’s private prayer on the field after the game was not unconstitutional); see also, *e.g.*, *American Legion v. American Humanist Ass’n*, 588 U.S. 29, 89 (2019) (war memorial in the shape of a large Latin cross at a busy intersection did not violate the Establishment Clause); *Town of Greece v. Galloway*, 572 U.S. 565, 591-592 (2014) (town did not violate the Establishment Clause by “opening its meetings with prayer”); *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (state legislature did not violate the Establishment Clause by paying a chaplain or opening with prayer). The reason is simple: “governmental invocation of God is not an establishment.” *McCreary Cnty., Ky. v. A.C.L.U. of Ky.*, 545 U.S. 844, 899-900 (2005) (Scalia, J., dissenting).

²⁴ <https://apnorc.org/projects/the-publics-opinion-on-religion-in-sports/>.

As this Court has said: Invoking “Divine guidance on a public body entrusted with making the laws” is not an establishment or even “a step toward establishment.” *Marsh*, 463 U.S. at 792. Much as a “prayer offered by a paid chaplain” to open a legislative session does not violate the Establishment Clause, *id.* at 787, so too a prayer offered by private persons before a football game does not violate the First Amendment. That is especially true because legislative prayer is constitutional not merely because of “its historical foundation.” *Town of Greece*, 572 U.S. at 576; see *American Legion*, 588 U.S. at 61 (plurality op.). Rather, the practice is constitutional because the Establishment Clause should be interpreted “by reference to historical practices and understandings.” *Town of Greece*, 572 U.S. at 576 (citation omitted). And the fact that the First Congress chose to “provide[] for the appointment of chaplains only days after approving language for the First Amendment demonstrates that the Framers considered legislative prayer a benign acknowledgment of religion’s role in society.” *Ibid.*

Similarly, prayers and religious demonstrations in sporting events are common in American life and have been for decades. The first NFL player who knelt in prayer in the endzone—a common sight today—was Philadelphia Eagles running back Herb Lusk, after he ran 70 yards to score a touchdown in 1977. See Chris McPherson, *Eagles celebrate the life of Herb Lusk* (Sept. 26, 2022).²⁵ More recently, Buffalo Bills players huddled in prayer after their teammate, Damar Hamlin, collapsed mid-game in early 2023. See Ruth Graham, *Prayers for Damar Hamlin Show Bond Between Football and Faith*, N.Y.

²⁵ <https://www.philadelphiaeagles.com/news/eagles-celebrate-the-life-of-herb-lusk-praying-tailback>.

Times (Jan. 7, 2023).²⁶ And just months ago ESPN aired the pre-game prayer for the Cotton Bowl between Ohio State and Texas. Jackson Thompson, *ESPN airs pre-game prayer for Cotton Bowl after backlash for not showing national anthem after terror attack*, FOX NEWS (Jan. 11, 2025).²⁷

This rich American tradition reflects “beliefs widely held among the people of this country.” *Marsh*, 463 U.S. at 792. Allowing private persons to offer a prayer over a loudspeaker before a football game does not establish religion any more than a prayer before a legislative session. It simply “respects the religious nature of our people and accommodates the public service to their spiritual needs.” *Zorach*, 343 U.S. at 314.

²⁶ <https://www.nytimes.com/2023/01/05/us/damar-hamlin-prayers-football-religion.html>.

²⁷ <https://www.foxnews.com/sports/espn-air-pre-game-prayer-cotton-bowl-after-backlash-not-showing-national-anthem-after-terror-attack>.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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