No. 24-1261

IN THE
Supreme Court of the United States

CAMBRIDGE CHRISTIAN SCHOOL, INC.,
Petitioner,

v.

FLORIDA HIGH SCHOOL
ATHLETIC ASSOCIATION, INC.,
Respondent.

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

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

John A. Eidsmoe*
**Counsel of Record*
Talmadge Butts
FOUNDATION FOR MORAL LAW
P.O. Box 148
Gallant, AL 35972
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org

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Counsel for *Amicus Curiae*

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Foundation for Moral Law ("the Foundation") is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God's moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files *amicus* briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case not only because it believes that the Establishment Clause as intended by its Framers does not bar public prayer, and that, to the contrary, the Free Exercise Clause protects such conduct.

SUMMARY OF THE ARGUMENT

This case presents a timely and important opportunity for the Court to reaffirm what it has already begun to restore: a jurisprudence grounded in the actual text and historical meaning of the First

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[1] Counsel of record for all parties received notice at least ten days prior to the due date of amicus curiae's intention to file this brief. Pursuant to Rule 37.6, *amicus curiae* certifies that 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.

Amendment. The students and faculty of Cambridge Christian School seek to pray aloud over the loudspeaker before a football game. That simple act—common across generations and consistent with the Founders' practices—was denied not because of its content or its timing, but because the Florida High School Athletic Association unilaterally declared that any speech over the loudspeaker constituted "government speech" and therefore could not include prayer. That reasoning is not rooted in the Constitution—it is a byproduct of judge-made doctrines that the Framers would not have recognized, and the First Amendment does not support.

For most of this country's history, public prayer was not a problem to be solved by courts but a natural outgrowth of a self-governing people's recognition of divine Providence. From the colonial period through the Revolutionary War, and from the founding era through modern statutory codification of the National Day of Prayer, public acknowledgments of God through prayer have been a defining feature of American civic life. The Founders, including George Washington, James Madison, and Benjamin Franklin, led the nation in days of public prayer and thanksgiving. These were not private acts of devotion. They were official expressions of faith by public officials in their public capacities.

This Court has rightly moved away from the now-discredited *Lemon* test and toward a jurisprudence that honors "historical practices and understandings." *See American Legion v. American Humanist Ass'n*, 588 U.S. 29 (2019); *Kennedy v.*

Bremerton Sch. Dist., 597 U.S. 507 (2022). In doing so, the Court has rightly emphasized the importance of understanding the Establishment Clause in light of how religion and public life actually coexisted at the founding—not as a wall of separation, but as a framework of non-coercive publicly practiced religious plurality. Viewed through that lens, the public prayer at issue here is not merely permissible; it is the kind of expression our constitutional tradition embraces.

At the same time, the "government speech" doctrine—invoked below to justify the exclusion of prayer—lacks any basis in founding-era thought. First formally articulated in *Rust v. Sullivan*, 500 U.S. 173 (1991), and later expanded in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), the doctrine has become an increasingly expansive carveout from First Amendment protections. But there is no evidence that the Founders ever conceived of a category of speech that, simply because it emanated from government-controlled property or infrastructure, could evade constitutional scrutiny entirely. To the contrary, the First Amendment was written to constrain government from impinging on the speech and religious expression of the people.

The Court should grant certiorari and reaffirm that the Constitution does not prohibit, but protects, the expression of sincere religious belief in the public square—including by students, teachers, and coaches who seek to begin their shared efforts in prayer. To declare such speech forbidden, merely because it passes through a state microphone, is to forget our history and undermine our freedom.

ARGUMENT

I. Public prayer has a long history dating back to America's Founding.

With *American Legion v. American Humanist Association,* 588 U.S. 29 (2019) and *Kennedy v. Bremerton School District,* 597 U.S. 507 (2022), this Court has moved away from *Lemon* and other court-created "tests" for religion cases and is prepared to focus instead upon whether the practice in question is consistent with historical practices and understandings.

While ruled by *Lemon v. Kurtzman,* 403 U.S. 602 (1971), Establishment Clause jurisprudence was completely adrift, grasping at the straws of court-created "tests" and sociology. Now, however, as the Court returns to historic practice and understandings, it is important to assess the special place of prayer in the life of the nation and the community. This case is the appropriate vehicle to do just that.

As we look to historical practices and understandings, we need to ask the underlying foundational question: Why did the framers of this nation so highly value prayer? And to put the question in current perspective, why do the students and faculty of Cambridge Christian School want to begin their football games with prayer?

That's part of a broader question: why do students, athletes, coaches, and others from public and private schools all across the country want to begin public events with prayer?

And why has public prayer been a consistent

practice throughout our nation's history, from colonial days to the present?

From the earliest colonial period through the ratification of the Constitution and well into the 19th century, American civil authorities—colonial, state, and federal—regularly proclaimed Days of Prayer, Fasting, and Thanksgiving. These official proclamations were issued in times of war, plague, national crisis, and public thanksgiving, reflecting the widespread belief that civil society ought to acknowledge its dependence on Divine Providence. *See* William J. Federer, History of Prayer in America, Nat'l Day of Prayer Task Force, https://www.nationaldayofprayer.org/about/history_of_prayer_in_america (last visited July 7, 2025).

Colonial assemblies, such as the Virginia House of Burgesses (1668), and governors in New England routinely set aside specific days for public fasting and prayer. *Id.* This tradition continued into the Revolutionary period. In 1774, the Virginia House of Burgesses unanimously adopted a resolution—drafted by Thomas Jefferson and supported by Patrick Henry and others—calling for a Day of Fasting and Prayer in response to British aggression. *Id.* George Washington noted in his diary that he observed the day with fasting and attendance at church. *Id.* Governor Lord Dunmore dissolved the assembly in response, prompting its members to regroup and lay the groundwork for the Continental Congress. *Id.*

During the War for Independence, the

Continental Congress issued at least eight formal calls for national days of fasting and prayer, often with language invoking repentance, divine forgiveness, and pleas for national deliverance. *Id.* Congress expressly recommended that "Christians of all denominations" assemble in worship on such days. *Id.* George Washington, as Commander-in-Chief, implemented these proclamations throughout the Continental Army, requiring observance by officers and soldiers alike and instructing chaplains to prepare sermons accordingly. *Id.*

After independence, this practice continued under the new federal government. President Washington, with the concurrence of Congress, proclaimed the first national Day of Thanksgiving in 1789, calling on Americans to acknowledge "the beneficent Author of all the good that was, that is, or that will be." *Id.* President Adams later declared Days of Humiliation and Prayer in 1798 and 1799 in response to international threats and national sin. President Madison followed suit during the War of 1812, declaring days of national prayer and public repentance. *Id.*

These practices were not isolated or peripheral but rather deeply embedded in the political culture of the early Republic. States continued to issue similar proclamations well into the 19th century, with governors in Virginia, Massachusetts, and New Hampshire setting aside days for prayer and fasting. *Id.* Prominent institutions like Yale required student attendance at public worship on officially

declared fast days. *Id.* Even amidst partisan disputes, figures across the spectrum—Federalist and Anti-Federalist, Protestant and Deist—participated in this civic-religious tradition.

The continuity of these proclamations—from colonial charters to state constitutions and national observances—demonstrates that religious expression by government actors was not only common but expected. The concept that such expressions could be invalidated under a "government speech" exception to the First Amendment would have been foreign to the Framers. Indeed, it was the very same First Congress that drafted the Establishment and Free Exercise Clauses which also requested that President Washington proclaim a national day of prayer.

The practices of Chief Justice John Jay and other Justices is also instructive. In *Freedom From Religion Foundation v. Mack,* No. 21-20279 (5th Cir. 2022), the Fifth Circuit approved a Texas Justice of the Peace's practice of opening his court sessions with prayer led by a volunteer chaplain. The Court noted that, according to *The Documentary History of the Supreme Court of the United States, 1789-1800* at 13-14, the nation's first Chief Justice, John Jay, authorized clergymen to open court sessions with prayer, and that this practice was followed by Justice Cushing (*Documentary History* at 59 n.1, noting "the Throne of Grace [was] addressed in Prayer by the Rev. Dr. Howard") by Justice Iredell (*II Documentary History* at 317, noting "the Rev. Dr.

Lathrop had addressed the throne of Grace, in prayer"), and by Justice Wilson (*II Documentary History* 331 n. 2, noting "the Throne of Grace was addressed in prayer by the Rev. Dr. Hitchcock.")

In 1853, considering the constitutionality and propriety of government chaplains, the Senate and House Judiciary Committees undertook extensive studies of the meaning of the Establishment Clause of the First Amendment. Their conclusions were very similar. We reproduce a portion of the Senate report:

> 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, and 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 member exclusive political rights, and by compelling the attendance of those who rejected its communion upon its worship, or religious observances. …
>
> 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.

S. Rep. 376 (1853).

At the Constitutional Convention of 1787, while the Convention was in disorder and in danger of breaking up, 81-year-old Benjamin Franklin gave a memorable speech. Franklin reminded the Convention,

> In this situation of this assembly, groping, as it were, in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate our understandings? In the beginning of the contest with Britain when we were sensible of danger, we had daily prayers in this room for

> the Divine Protection. Our prayers, sir, were heard, and they were graciously answered. . . And have we now forgotten that powerful Friend? or do we imagine we no longer need His assistance? I have lived, sir, a long time; and the longer I live, the more convincing proofs I see of this truth: that God governs in the affairs of men. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the Sacred Writings that except the Lord build the House, they labor in vain that build it. I firmly believe this; and I also believe that without His concurring aid, we shall succeed in this political building no better than the builders of Babel . . . and we ourselves shall become a reproach and a byword down to future ages.

Constitutional Convention Address on Prayer (June 28, 1787) (available at https://wallbuilders.com/resource/franklins-appeal-for-prayer-at-the-constitutional-convention/). During the three-day weekend which followed this session of the Convention, many of the delegates gathered in the Reformed Calvinistic Church of Philadelphia, where they heard the Rev. William Rodgers deliver a prayer for them:

> That we may continue to enjoy these important blessings, be pleased, O Lord, to visit all the nations of the earth, and incline their hearts to *peace* and *love*; shower down upon them thy heavenly grace; may they know THEE as the KING OF KINGS and LORD OF LORDS! In an *especial* manner, DO

THOU visit *our* land, graciously regard *our* country, protect and defend our infant, but hitherto highly favoured Empire, bless our CONGRESS, smile upon each particular State of the UNION: May those who are in authority rule in thy fear, prove a terror to evil doers, and a praise to them who do well! As this is a period, O LORD! big, with events, impenetrable by any human scrutiny, we fervently recommend to thy fatherly notice, that *august* Body assembled in this city, who compose our FEDERAL CONVENTION; will it please THEE, O THOU ETERNAL I AM! to favour them from day to day with thy immediate presence; be thou *their wisdom* and *their strength!* Enable them to devise such *measures* as may prove happily instrumental for healing *all* divisions, and promoting the *good* of the great WHOLE; incline the hearts of *all* the people to receive with pleasure, combined with a determination to carry into execution, whatever these thy servants may *wisely* recommend; that the *United States of America* may furnish the *world* with ONE example of a free and permanent government, which shall be the result of human and mutual deliberation, and which shall not, like all other governments, whether ancient or modern, spring out of *mere chance*, or be established by *force*. – May we triumph in the cheering prospect of being completely delivered from anarchy; and continue, under the influence of republican virtue, to partake

> of all the blessings of cultivated and civilized society! In tender mercy bless this Commonwealth, the President, Vice President, and Supreme Executive Council, our Legislative Body, and the respective Judicial Departments!
>
> *Finally*, we commend to thy paternal regard, *all* orders of men, *all* seminaries of useful learning, the Ministers of the gospel of *every* denomination, the Church of CHRIST, and all for whom we ought to pray. – With heart-felt gratitude we anticipate the GLORIOUS ERA, when instead of the *thorn*, shall come up the *fir-tree*; instead of the *briar*, shall come up the MYRTLE-TREE; and WISDOM and KNOWLEDGE shall be the stability of the times, both in *church* and *state*.[2]

Franklin clearly recognized the reason for prayer: God is real, and He hears and answers prayer. Our well-being, as individuals, groups, and nations, depends upon God's blessings upon us. As Franklin said, "Our prayers, Sir, were heard, and they were graciously answered." And he said further, "God governs in the affairs of men." As the 1853 Senate Committee recognized, our Founding Fathers "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."

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[2] *The Massachusetts Centinel*, August 15, 1787, p.1. (available at: https://wallbuilders.com/resource/july-4th-prayer/). Emphasis original.

While football games were nonexistent in early America, prayer in schools was a common practice in the 18th, 19th, and early 20th centuries. According to Adam Laals, at least 50% of public schools practiced some form of homeroom daily religious exercise.[3] Of course, this practice was curtailed by this Court's decisions in *Engel v. Vitale,* 370 U.S. 421 (1962) and *School District of Abington Township, Pennsylvania v. Schempp,* 374 U.S. 203 (1963), but, nevertheless, prayer was a clear part of the historical practices and understandings of the founding period and most of American history.

Prayer remains a prominent public practice even in modern America. In 1952, Congress officially designated the first Thursday of May as the "National Day of Prayer" to formalize the tradition set by the Founders. 36 U.S.C. § 119. As codified, the president is required under law to sign and publish a proclamation that sets the specific date "on which the people of the United States may turn to God in prayer and meditation in churches, in groups, and as individuals." *Id.*

Today, we talk about accommodating prayer like we accommodate other religious practices. Some believe we should accommodate "people of faith" because that is the kind and tolerant thing to do, or because we recognize that we must accommodate them because of the Free Exercise Clause of the First Amendment. But historically, we have

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[3] Adam Laals, "Our Schools, Our Country: American Evangelicals, Public Schools, and the Supreme Court Decisions of 1962 and 1963," *Journal of Religious History* 36.3 (2012) 319-334 at 321-22.

recognized prayer on public occasions because we believe God exists, He hears and answers prayer, and we as a people need the aid He provides through answers to prayer.

And this is the reason the students and faculty of Cambridge want to pray before athletic events. They want to pray because they believe God hears and answers prayer, so they pray that God will enable them to play sports to the best of their ability, that He will guide them to play according to the rules of good sportsmanship and ethical conduct, and that He will preserve both sides from injury. Unless and until modern jurists recognize that this is the traditional and historic reason for prayer, consistent with the First Amendment, they will not understand or appreciate the proper place of prayer in the life of the person, the community, and the nation.

Like the silent, personal prayer of Coach Kennedy on the football field in *Kennedy v. Bremerton School District*, the prayer at issue here is a voluntary act of religious expression tied to a significant communal moment. In both cases, the speaker sought not to proselytize or coerce, but to seek God's guidance and protection in a spirit of humility and faith. Just as this Court recognized that Coach Kennedy's prayer was protected by the Free Exercise and Free Speech Clauses, so too should it recognize that the students and faculty of Cambridge Christian have the same right to pray—audibly and together—before taking the field.

As this nation recognizes God in its Pledge, its national anthem, its currency, its national motto, and in so many other aspects of public life, this Court

should examine the special place of prayer. Prayer is not just a religious ritual; it is the means by which we as a people seek God's blessing, aid, and guidance for us as a people and as a nation. Likewise, as shown by the nation's grief over the tragic loss of life from the Fourth of July flash flood in Texas, prayer to God is a comfort in the midst of tragedy. Without a recognition of the special meaning of prayer, this Court's Establishment Clause jurisprudence will be incomplete.

II. The Founders would not have recognized the judge-made doctrine of "government speech."

The government speech doctrine is judge-made law that is both new and imprecise. *See Johanns v. Livestock Mktg. Ass'n.*, 544 U.S. 550, 574 (2005) (Souter, J. dissenting) ("The government speech doctrine is relatively new and correspondingly imprecise."). Under this doctrine, once speech is deemed "government speech," the Supreme Court considers the Free Speech Clause inapplicable. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2235 (2015). This jurisprudence has created a system of "First Amendment capture" whereby the government can "monopolize a marketplace and down out opposing viewpoints." Caroline Mala Corbin, *Government Speech and First Amendment Capture*, 111 VA. L. REV. 1181 (2023). America's Founders and the Framers of the First Amendment would not recognize the government speech doctrine whatsoever, and the doctrine is due to be held unconstitutional.

There is no evidence that the Founders

envisioned a category of speech immune from First Amendment scrutiny simply because it originated with the government. To the contrary, the Framers adopted the First Amendment precisely to restrain government in the realm of expression. The notion that the government can now exempt itself from that prohibition by declaring its own speech categorically beyond constitutional review would have struck the Founders as incoherent. Government, in their understanding, was the primary object of restraint—not a privileged speaker entitled to monopolize public discourse.

Indeed, as detailed in Part I, the public expression of religious and moral ideas by government actors was not only tolerated in the founding era—it was actively encouraged. Far from a violation of constitutional norms, such public acknowledgments of divine providence were seen as consistent with republican virtue and public duty. Days of Prayer, Fasting, and Thanksgiving were routinely proclaimed by Congress and by presidents from Washington to Madison, demonstrating that official expressions on matters of ultimate concern were not considered constitutionally suspect merely because they emanated from the government.

The Framers' understanding of public expression did not include a categorical distinction between "private" and "government" speech for the purpose of evading constitutional scrutiny. Rather, when government engaged in expression, it was still understood to be constrained by the principles of natural rights and popular sovereignty. As Philip Hamburger has shown, the Founders' concern was

not with government expression per se, but with coercive establishments of religion or other exercises of arbitrary power. *See Separation of Church and State* (Harvard Univ. Press 2002). The modern government speech doctrine, by contrast, provides a mechanism for the state to avoid constitutional limitations, not to observe them.

Nor is the government speech doctrine supported by longstanding precedent. The doctrine first emerged in *Rust v. Sullivan*, 500 U.S. 173 (1991), where the Court held that the government could restrict abortion-related counseling in federally funded clinics. But even in *Rust*, the Court did not announce a free-standing doctrine; it simply upheld a funding condition. *Id.* at 203. It was not until *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), that the Court more fully articulated the government speech doctrine as a categorical exclusion from First Amendment scrutiny.

The practical consequence of the doctrine is a system in which the government can co-opt public forums, marginalize dissenting viewpoints, and label ideological messaging as its own to evade constitutional challenge. This approach is alien to the Founders' vision of a robust marketplace of ideas and an accountable public square. At the founding, public spaces—including schools, legislatures, and town commons—were understood to be shared civic arenas, not platforms for unilateral government messaging. The modern notion that the government may speak without constraint, simply by affixing its imprimatur to the message, has no roots in founding-era practice or theory. It is a judicial

invention—recent, imprecise, and incompatible with the First Amendment's original meaning.

CONCLUSION

The Foundation urges this Court to grant this petition for writ of certiorari. The students of Cambridge Christian and people of America have the right to public prayer in the tradition of our forefathers, and it is time for the Supreme Court to affirm this truth.

Respectfully submitted,

John A. Eidsmoe*
**Counsel of Record*
Talmadge Butts
FOUNDATION FOR MORAL LAW
P.O. Box 148
Gallant, AL 35972
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org
Counsel for *Amicus Curiae*

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