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

BRIEF OF *AMICI CURIAE* AMERICAN CHRISTIAN SCHOOLS INTERNATIONAL, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS, ET AL. IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*

This brief is filed on behalf of *amici* seeking to ensure the protections of free exercise of religion and free speech rights of students to engage in prayer.[1]

The **Association of Christian Schools International (ACSI)** is a nonprofit association providing support services to 24,000 Christian schools in over 100 countries. ACSI directly serves over 5300 member schools worldwide, including 2200 Christian preschools, elementary, and secondary schools and 90 post-secondary institutions in the United States; 160 Christian international schools; and over 3000 Christian global schools. Member-schools educate some 5.5 million children around the world. ACSI accredits Protestant pre-K—12 schools, provides professional development and teacher certification, and offers member-schools high-quality curricula, student testing and a wide range of student activities. ACSI members advance the common good by providing quality education and spiritual formation to their students. ACSI's calling relies upon a vibrant Christian faith that embraces every aspect of life. This gives ACSI an interest in ensuring expansive religious liberty with strong protection from government attempts to restrict it.

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[1] Pursuant to this Court's Rule 37.6, *amici* certify that no counsel for any party authored this brief in whole or in part, and no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than *amici* or their counsel made such a monetary contribution. Pursuant to this Court's Rule 37.2, *amici* certify that counsel of record for all parties received timely notice of the intent to file this brief.

The **American Association of Christian Schools (AACS)** is an association of thirty-eight state and regional associations working together to promote high quality Christian education programs. The AACS provides institutional and personnel services to its constituents, including legislative and policy oversight. The AACS also coordinates the Christian Higher Education Coalition (CHEC), an association of Christian institutions of higher education allied for the purpose of protecting their First Amendment religious and academic freedoms from government infringement.

The **Florida Association of Christian Colleges and Schools (FACCS)** is a voluntary service organization, providing an association for Christian schools, Christian colleges and universities, homeschool groups, and homeschool families. Started in 1968, it is the oldest, state-level association of Christian schools in the nation. Guided by Biblical values, the purpose of FACCS is to provide academic excellence through accreditation, to deliver program services through professional educator development and student opportunities, and to preserve liberty through legislative support for Christian schools.

The **Sunshine State Association Of Christian Schools Inc. (SSACS)** is a Christian school association affiliated with AACS. SSACS offers programs and services that advance Christian schools, encourage and equip teachers and challenge students. SSACS offers Teacher Conventions, student Academic and Fine Arts Competitions, Standardized Achievement Testing, and insurance programs. SSACS also offers Pre-K and K-12 accreditation.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court recently went to great lengths to confirm that "[t]he practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of protection from our Constitution" and "extends to the choices that parents wish to make for their children outside the home." *Mahmoud v. Taylor*, No. 24-297, Slip Op. at 18 (June 27, 2025). State actors should not be allowed to turn religious freedom in the education context into an "empty promise" through an overbroad use of the government-speech doctrine. *See id.* at 19.

The Eleventh Circuit held that it would have been "government speech" for a ***non-government*** speaker to pray over the PA system during a championship game ***between two Christian schools***—even though other secular messages and advertisements were allowed over the same PA system. This approach to government speech threatens religious liberty and First Amendment rights, especially in the context of public education.

First, public prayer is no less important than secular speech; religious expression should not be singled out for less favorable treatment. Second, the Eleventh Circuit's overbroad approach to "government speech" allows the opposite result; by ignoring the private identity of the speaker who would conduct the prayer, the Eleventh Circuit allowed the "government speech" doctrine to usurp individual First Amendment rights. Third, if public prayer is not even permissible in a game between two Christian schools, where does the Eleventh Circuit's reasoning end? It is a recipe for restricting religious speech across nearly all public contexts.

ARGUMENT

I. Prayer in a public space must be treated at least as well as secular speech.

This Court has recognized the vital importance of protecting the right to religious expression in public spaces. "Respect for religious expressions is indispensable to life in a free and diverse Republic—whether those expressions take place in a sanctuary or on a field, and whether they manifest through the spoken word or a bowed head." *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 543 (2022).

Accordingly, this Court carefully scrutinizes government policies that disfavor religious speech. The Constitution does not "'compel the government to purge from the public sphere' anything an objective observer could reasonably infer endorses or 'partakes of the religious.'" *Id.* at 535 (citation omitted). Government policies that discriminate against religion are "odious to our Constitution." *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 476 (2020) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 467 (2017)).

The Constitution ***forbids*** "ferret[ing] out and suppress[ing] religious observances even as [the government] allows comparable secular speech." *Kennedy*, 597 U.S. at 543-44. The government may not "prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021). Nor can it "discriminate against religion when acting in its managerial role." *Id.*

Christian schools have substantial reason for concern when government entities permit private speech over a loudspeaker but censored private religious speech solely because it was religious. The decades of precedent protecting religious liberty rights are jeopardized when a government entity "periodically often" permits school representatives to offer welcoming remarks over the loudspeaker, Pet. App. 196a-97a, but then denies two Christian schools' request to engage in communal prayer over the loudspeaker. Pet. App. 11a. Christian schools are rightfully concerned when the government seems to "single out the religious for disfavored treatment." *Trinity Lutheran*, 582 U.S. at 460.

II. An overbroad definition of government speech quashes First Amendment rights.

Adequately policing the lines between government and private speech is important to ensure that government actors do not utilize an overbroad definition of government speech to quash First Amendment rights. The Eleventh Circuit's decision warrants careful review to police that line.

This Court has already recognized how the government-speech doctrine is "susceptible to dangerous misuse." *Matal v. Tam*, 582 U.S. 218, 235 (2017). "If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints." *Id.* Without the "great caution" this Court urged "before extending" precedent as to what constitutes "government-speech" this defense can render First Amendment rights a nullity. *See id.*

Amici use the phrase "First Amendment rights" generally because the overbroad application of the government-speech defense impacts ***both*** free speech ***and*** free exercise rights. The danger to free speech rights is self-evident: because "[t]he Free Speech Clause does not regulate government speech," *id.* at 234 (internal citations and quotation marks omitted), when the government recategorizes private speech as government speech, it does so to restrict the private actor's speech. But an overbroad application of the government-speech doctrine also jeopardizes religious liberty—as in this case involving public prayer, which implicates both of those two important First Amendment rights.

This danger is not unfamiliar to this Court. An overbroad application of the government-speech doctrine can be utilized to end-around the ban on "viewpoint discrimination" when "government creates a limited public forum for private speech." *Id.* at 243 (Alito, J., concurring). In other words, an expansive view of the government-speech doctrine empowers government actors to mask discrimination by recasting a private actor's speech with a legal fiction of government speech. *Cf. Shurtleff v. City of Boston, Massachusetts*, 596 U.S. 243, 263 (2022) (Alito, J., concurring) ("cover for censorship"). Without careful line-drawing, yet another avenue is opened to violate free exercise rights by "singl[ing] out private religious speech for special disfavor." *Kennedy*, 597 U.S. at 514.

While the Court has emphasized the need for careful line-drawing, its precedent leaves open the possibility of such an overreach. The law would benefit from this Court enforcing some of the real limits of the government-speech doctrine.

For example, what is the role of the identity of the speaker in the government-speech analysis? This Court has indicated that whether speech constitutes government speech turns heavily upon the identity of the speaker. Government speech occurs "[w]hen the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs"; *i.e.* when it "transmit[s] the government's own message." *Shurtleff*, 596 U.S. at 251-52. A private message by a private speaker could be said—by definition—not to be government speech as the government does not "intend[] to speak for itself." *Id.* at 252. A meaningful limit would be placed on this potentially-abused government-speech doctrine if this Court confirmed that in conducting this inquiry "courts must focus on the identity of the speaker" and "government speech occurs if—but only if—a government purposefully expresses a message of its own through persons authorized to speak on its behalf." *Id.* at 263, 267 (Alito, J., concurring).

While *Shurtleff* articulated a three-part test to determine whether speech is government speech, intermediate courts have split over which factor to emphasize. That split is predictable, given that the Court has been forthright that "[t]he boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program." *Id.* at 252.

The identity of the speaker—the private party praying—played very little role in the Eleventh Circuit's analysis. The Court reframed the inquiry into the identify of speaker—"the public's likely perception as to who (the government or a private person) is speaking," *id.*—as the "endorsement factor." Pet. App. 39a. The "identity of the speaker" received only a passing reference. *See id.* at 42a. No surprise that the identity of the speaker received little attention in this case in which "it is far-fetched to suggest that the content" of particular speech conveys a government message. *See Matal v. Tam*, 582 U.S. at 236. If any speech coming through a football stadium's loudspeaker is the government's speech, the government "is babbling prodigiously and incoherently" and "unashamedly endorsing a vast array of commercial products and services." *Id.*

Unlike the Eleventh Circuit's minimization of the identity factor, other circuits put significant weight on this favor both by noting who made the speech at issue ("individual teachers") and the government's role in the content of the speech ("passive role"). *Cajune v. Indep. Sch. Dist. 194*, 105 F.4th 1070, 1080-82 (8th Cir. 2024).

At a minimum, this case provides the Court an opportunity to provide clarity by directing lower courts to put heavy weight on the identity of the speaker—thereby providing real limits to the overuse of the government-speech exception. Given the dangerous results caused by an overbroad application of the government-speech doctrine, *amici* would benefit from an answer to the split on this issue that petitioner has identified.

III. If prayer is not even allowed in a game between two Christian schools, then religious speech will be jeopardized in other contexts too.

The unique facts of this case demonstrate how far the Eleventh Circuit's decision sweeps. Both schools at the championship game were Christian schools, and the request was for a *non-governmental* speaker to pray over the loudspeaker. If that can be passed off as government speech, then where does the logic end?

This Court has recognized that prayer is proper at municipal meetings. *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 591-92 (2014). It cannot be the law that two Christian schools are entitled to less religious liberty than secular city meetings.

Under the Eleventh Circuit's reasoning, it is unclear what more these Christian schools could do to make clear that their desire to pray is a private expression of their own faith—not the government's. The mere fact that a prayer takes place during a public event or using government-owned property (*e.g.*, the PA system) does not make it "government speech," any more than a private citizen expressing his or her views—perhaps religious ones—at any other public forum would be considered as such.

The Eleventh Circuit reasoned that because (with the exception of one prior championship game) all pre-game speech was previously conducted by a "state actor," this "history" shows that a prayer by someone else (a *non-governmental* speaker) would still be on behalf of the government. Pet. App. 37a.

But this logic proves far too much. It allows the government to crowd out private speech as it sees fit:

> And when governments allow private parties to use a resource normally devoted to government speech to express their own messages, the government cannot rely on historical expectations to pass off private speech as its own.

Shurtleff, 596 U.S. at 265 (Alito, J., concurring).

If a "history" of speech by "state actors" means that there is no room for someone else to speak too (lest it be viewed as government speech), then the government could *never* open a forum to private speakers (*e.g.*, inviting the public to share comments during a municipal meeting for the very first time) without it being dubbed "government speech."

This rationale turns the government-speech doctrine into a weapon, allowing it to discriminate against viewpoints and single out religious perspectives for adverse treatment. But as the Eleventh Circuit has previously held, the First Amendment does not allow "religious speech" to be "confine[d] . . . to whispers or banish[ed] . . . to broom closets." *Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000). That reasoning applies here.

CONCLUSION

This Court should grant certiorari to ensure that free exercise and free speech rights to engage in public prayer are not compromised by an overexpansive government-speech doctrine.

Respectfully submitted,

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