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

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BRIEF *AMICUS CURIAE* OF THE THOMAS MORE SOCIETY IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICUS[1]

The Thomas More Society (TMS) is a nonprofit national public interest law firm based in Chicago, Illinois. As part of its mission, it advocates on behalf of First Amendment rights, including freedom of speech and religious freedom. Consistent with this mission, TMS files this *amicus* brief in support of Petitioner.

SUMMARY OF ARGUMENT

There can be no doubt that Coach Kennedy's personal prayer of thanksgiving at the end of each game was protected by the First Amendment and that Bremerton's sole reason for restricting it was *because* it was religious. Bremerton's claim that its clear targeting of religious expression was necessitated by a need to avoid violating the Establishment Clause is meritless.

In addition, by virtue of its sweeping prohibition on Kennedy's ability to pray in view of his players, Bremerton also, necessarily, interfered with the independent right of those players to join together *with* Coach Kennedy in prayer. Bremerton offers no defense whatsoever for violating the rights of these players to pray with whomever they choose.

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[1] No counsel for any party authored this brief in whole or in part, and no party, person or entity other than the *amicus*, has made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties have filed blanket consents.

Bremerton would not have violated the Establishment Clause by *allowing* Coach Kennedy and his players to join together to give thanks in prayer. First, it is fanciful for Bremerton to suggest that it could have been found to have sponsored or endorsed Coach Kennedy's personal prayers. Indeed, Bremerton claimed to have had no knowledge that those prayers were even taking place for a full seven years. And, when it learned of them, it expressly, and very publicly, forbade Coach Kennedy to continue them. Likewise, Bremerton conceded that Coach Kennedy never attempted in any way to "coerce, pressure, or actively encourage" any person to join him in his brief personal prayer of thanksgiving.

The lack of any indicia of support or endorsement for Coach Kennedy's personal prayer *by Bremerton,* or any actual coercion on the part of Coach Kennedy, removed all potential for Bremerton to be held liable for violating the Establishment Clause. Therefore, the District's attempt to hide behind the Establishment Clause to defend its impermissible restrictions on Coach Kennedy's constitutionally protected religious expression was entirely unjustified.

Notwithstanding the absence of any support for its ban under this Court's decisions, Bremerton nevertheless argues that the ban was required in order to prevent the District from violating the "constitutional rights of students" to be free from

"indirect encouragement" to participate in religious expression. According to this proposition, the Establishment Clause affords students, who might be offended by prayer or feel peer pressure if their friends join in prayer, an affirmative right to be free from any exposure to religious expression on school premises. And, the District argues, its *failure* to protect these students by eliminating the potential for such exposure would make the District liable for violating the "rights" of these students—no matter how ill-defined and unquantifiable those "rights" may be. Its argument is insupportable and would not be applied to non-religious expression. Therefore, it must be rejected.

Given that Bremerton could not have violated the Establishment Clause by virtue of *allowing* Coach Kennedy's religious expression, its sweeping ban on that expression is forbidden by the Free Exercise and Free Speech Clauses. And, the fact that Bremerton would not ban similar, but *non-religious,* expression in this same manner exposes and highlights its actual hostility toward religious expression.

The Establishment Clause does not require government entities to root out and ban what Bremerton views as "indirect encouragement" of religion. Indeed, this Court has warned of the dangers associated with reading the Establishment Clause in this manner. To do so would impermissibly allow the District to bestow—on those students most sensitive to peer pressure or most intolerant of religious

expression—a veto power over Coach Kennedy's constitutionally protected right to pray and the rights of those other students who wish to pray with him.

Both of the Religion Clauses were intended to *protect* religious liberty. One was not intended to be used to negate the other. Bremerton violates the intent of both Clauses by banning Coach Kennedy from taking a knee and bowing his head to say a personal prayer of thanksgiving in view of his players or any spectators.

ARGUMENT

Coach Kennedy made a simple request that he be allowed to take a knee, bow his head and say a brief prayer of thanksgiving after he shakes hands with the opposing team at midfield at the end of games. Bremerton refused to allow him to do this. Instead, it issued a sweeping directive stating:

> While on duty for the District as an assistant coach, you may not engage in demonstrative religious activity, readily observable to (if not intended to be observed by) students and the attending public.

JA94. Bremerton violated Coach Kennedy's constitutionally protected right to engage in religious expression by targeting it for adverse treatment solely because it is religious. And, by refusing to allow Kennedy to pray within view of his players, the

District necessarily also violated the rights of those players to pray *with* their coach.[2]

Bremerton claims that it is not only free to violate the rights of Coach Kennedy and the rights of his players in this manner, but is also *required* to do so. It bases this claim on three assertions.

First, it declares that because Coach Kennedy is an employee of the District and his religious expression took place while he was on duty, it is not protected by the First Amendment at all. Next, the District contends that even if Kennedy's religious expression was constitutionally protected, it was still authorized to restrict that religious expression because it needed to avoid the "perception of endorsement" under the Establishment Clause. Finally, while admitting that Coach Kennedy in no way attempted to coerce or actively encourage any student to join him in his brief personal midfield prayer, Bremerton maintains that its *failure* to suppress Kennedy's religious expression would violate the Establishment Clause by allowing indirect encouragement to participate through what can best be described as peer pressure.

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[2] Bremerton may not have been aware that it was also violating the rights of these students. As discussed in Part II B *infra*, it seemed oblivious to the fact that it was treating one group of students more favorably than another based on whether or not they wished to join in prayer.

Each of these three claims is discussed below. And, for the reasons set forth, each is without merit.

I. Bremerton Violated the First Amendment Rights of Both Coach Kennedy and Those Players Who Wished to Pray With Him.

A. Bremerton Violated Coach Kennedy's Freedom of Speech and Religious Liberty.

Coach Kennedy's religious expression was protected by the First Amendment. In *Garcetti v. Ceballos*, this Court stated that the "controlling factor" in determining whether an employee's speech is constitutionally protected is whether it was made "pursuant to his duties." 547 U.S. 410, 421 (2006). In explaining that Mr. Ceballos' speech was his employer's speech and not protected, the Court noted that he "wrote his disposition memo because that is part of what he, as a calendar deputy, was employed to do." *Id.*

Coach Kennedy seeks to engage in a *personal* prayer of thanksgiving at the end of each football game. He most certainly *does not* pray *because* that is part of what he, as a coach, was employed to do. Instead, he does this because he feels compelled to do so pursuant to his *personal* and deeply held religious beliefs. Pet.App.3-4; JA168-169.

And, Bremerton does not claim that Kennedy was *hired, as a coach, to pray* after each game. Rather, it has forbidden him to do so within view of

the public or his players. Thus, the speech at issue here—Kennedy's personal prayer of thanksgiving—cannot be deemed to be "employer speech." As such, it is his own personal religious speech and is protected by the First Amendment.

Bremerton's sole reason for restricting Kennedy's religious expression was *because* it was religious. Pet.App.23. Thus, Bremerton's religious viewpoint based discrimination violated Kennedy's constitutional right to engage in religious expression.

B. Suppression of Coach Kennedy's Prayer Also Infringed Upon the Constitutionally Protected Rights of Those Players Who Wished to Join With Coach Kennedy in Prayer.

Students, like Coach Kennedy, may be deeply religious individuals and wish to engage in prayers of thanksgiving for the same reasons that Coach Kennedy felt compelled to pray. This may be especially true given the many serious injuries that football players can suffer. However, both Bremerton and the Ninth Circuit seem to doubt or discount this truth.[3]

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[3] Noting that these students did not appear to pray on their own after Coach Kennedy was suspended for praying, they imply that the students who did pray with Kennedy were somehow insincere or that they did so due to some improper influence. Pet.App.10. However, any reluctance that they may have had to continue their midfield prayers more likely stemmed from the

Regardless, the record evidence clearly demonstrates that the joint prayers began when students asked Coach Kennedy if they could join him. Pet.App.4. Kennedy did not initiate the request, he simply did not actively discourage them from joining him and allowed them to do so.[4] The appropriate inference that the Ninth Circuit should have drawn from this fact is that a majority of the team apparently derived some spiritual benefit from voluntarily gathering with Coach Kennedy in prayer after games.

The right to engage in religious expression is not limited to individual prayer. It also includes the right to do so in association with others. By refusing to allow Coach Kennedy to pray in view of his players or any spectators, Bremerton also necessarily infringed upon the constitutional right of these students to engage in religious expression *with* Coach Kennedy.

Bremerton offers no defense whatsoever for violating the rights of these players to pray with whomever they choose.

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fact that they had just witnessed their coach being disciplined for praying and they feared they would be similarly disciplined.

[4] Board Policy 2340 specifically states that school staff shall neither encourage *nor discourage* a student from engaging in any form of "devotional activity." JA42. So, Kennedy's failure to discourage these students from joining him was consistent with this policy.

II. Bremerton Would Not Have Violated the Establishment Clause By Allowing Coach Kennedy and His Players to Join Together to Give Thanks Through Prayer.

A foundational principle, one seemingly lost on Bremerton and the Ninth Circuit, is that there must at least be some action *by government* which constitutes *support for religion* in order to qualify as an *establishment* of religion in violation of the Establishment Clause. The mere failure to suppress religious expression, without the presence of government support or involvement, cannot create an Establishment Clause violation. As this Court stated in *Board of Educ. v. Mergens*, "schools do not endorse everything they fail to censor." 496 U.S. 226, 250 (1990). In the absence of any evidence of underlying government support for Coach Kennedy's religious expression or evidence of any coercion on the part of Coach Kennedy, Bremerton has no legitimate excuse for suppressing his prayers.

A. Bremerton Did Not Endorse Coach Kennedy's Personal Prayer.

Bremerton claims that it was permitted to infringe upon Coach Kennedy's First Amendment rights in order to avoid violating the Establishment Clause. Its primary claim is that a reasonable observer would believe that by allowing Kennedy to

take a knee and bow his head for a brief personal prayer at midfield Bremerton was endorsing his prayer.[5]

It is ludicrous for Bremerton to suggest that it could be found to have *endorsed* Coach Kennedy's personal prayer. There is not a shred of evidence to suggest that Bremerton sponsored, facilitated, directed or was in any way even remotely involved in the conduct of Coach Kennedy's personal religious expression. Indeed, Bremerton claimed to have had no knowledge that it was even occurring for a full seven years. Pet.App.5. And, no reasonable observer possibly could have believed that Coach Kennedy's religious expression—expression that Bremerton very publicly and expressly forbade—was endorsed by the District. *See*, Ikuta, J., Pet.App.107-108

Moreover, every one of this Court's Establishment Clause cases that is cited by the Ninth Circuit begins with an examination of the *government policy supporting* the challenged practice and then determines whether that policy violates the Establishment Clause. Unlike all of those cases, there is no such school policy that supports Coach Kennedy's personal religious expression to examine. Nor is there any other evidence of District support for that expression.

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[5] Whether an "endorsement" test should continue to control in Establishment Clause cases is beyond the scope of this brief. *See*, R. Nelson, J., Pet. App.114, questioning its continued validity.

Both Bremerton and the Ninth Circuit rely heavily on this Court's decision in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), and treat it as though it is controlling here. Yet, neither attempts to actually analyze that decision to explain its relevance. Their failure to do this is telling. Had they compared the two cases, the fundamental differences between them would have been glaring.

Santa Fe begins with a detailed examination of the ways in which the school district had actively participated in, and thrown its weight behind, the prayer involved. The Court devoted a large portion of the opinion to a discussion of the relevant *school policy* that permitted the student led prayer, dictated how the student would be selected, and set limits on the content of the invocation as well as provided the means for it to be broadcast over the public address system at the start of games.

In stark contrast, Bremerton has done nothing remotely similar that would demonstrate any support for Coach Kennedy's religious expression. Thus, all of the salient features of government *support* that were relied upon by the *Santa Fe* Court in reaching its decision are lacking here.

In short, the District has done absolutely nothing to support Coach Kennedy's religious expression and everything in its power to suppress it. This cannot possibly constitute endorsement. *See*, R. Nelson, J., Pet.App.114. (Bremerton's "degree of involvement" in

Kennedy's personal prayers and those of the players who voluntarily join him "is zero.")

B. Neither Bremerton nor Coach Kennedy Ever Attempted to Coerce Anyone to Participate in Religious Expression.

The evidence in this case clearly demonstrates that Coach Kennedy's brief midfield prayer at the end of games was *personal*. He stated that his prayer was a way for him to give thanks "for player safety, sportsmanship, and spirited competition" and for "the opportunity to be a part of [the players] lives through football." Pet.App.3-4.

He began by praying alone. Pet.App.4. However, when asked by players if they could join him, he permitted them to do so. *Id.* The number of players who joined him varied from game to game. JA169. Sometimes he prayed alone, and at other times, players joined him. *Id.* He never attempted to coerce, persuade or encourage any person to join him. JA170. Nor did he ever suggest that he thought it was important for players to join him. *Id.*

After investigating this matter, Bremerton conceded that, while Kennedy had allowed players to join him in his midfield prayers, he had not "actively encouraged, or required, participation." JA41. Thus, the record demonstrates clearly that *no state actor* attempted to coerce, persuade or cajole any student or

member of the public into joining Coach Kennedy in his midfield prayer.

The sole allegation that Bremerton and the Ninth Circuit focus on as potential evidence of actual coercion is wholly unsupported by any record evidence. The court notes that, after Bremerton suspended Coach Kennedy, it was made aware that an atheist student joined Coach Kennedy's midfield prayer "out of fear that declining to do so would negatively impact his playing time." Pet.App.21. Thus, it suggests that although there is no overt coercion, there may be subtle coercion at work.

Such fear might be reasonable in some situations where the evidence demonstrates that student participation was treated favorably or that failure to participate was treated unfavorably—i.e., that there was some *actual consequence* attached to participation.[6] However the record here is devoid of any evidence that Coach Kennedy made decisions regarding a player's playing time based on player participation in his prayers.

The total lack of any evidence of endorsement on the part of Bremerton or coercion on the part of

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[6] See, e.g., *Hening v. Adair*, No. 7:21-cv-00131 (W. D. Va., Complaint filed March 3, 2021) (alleging that a starting soccer player was berated and benched by her coach after *refusing* to take a knee during the National Anthem).

Coach Kennedy or any other government actor proves that Bremerton could not possibly have been held liable for violating the Establishment Clause. Consequently, Bremerton's attempt to hide behind the Establishment Clause to defend its infringement on Coach Kennedy's constitutional rights is utterly without merit.

C. Indirect Encouragement of Religious Expression In the Form of Ill-defined and Unquantifiable Peer Pressure Does Not Violate the Establishment Clause.

Notwithstanding the absence of any support for its ban under this Court's decisions, Bremerton, nevertheless, argues that allowing Coach Kennedy to pause briefly to pray at the end of a game constitutes "overt, public religious displays on the football field" in view of others and would put the District at risk of being liable for violating the "constitutional rights of students or others." JA104. *See also*, JA107, JA110, JA41-42, JA45. Bremerton never attempts to identify the contours of those supposed "rights." Nor does it attempt to identify the source of the alleged "harms" done to those "rights." It does, however, mention that it believes that school staff may not "*indirectly encourage* students to engage in religious activity." JA42 (emphasis supplied).

The best that can be gleaned from the above statements is that Bremerton believes that there is evidence of *indirect encouragement*, for players to join

in Coach Kennedy's midfield prayers—seemingly in the nature of peer pressure.[7] And, the District's failure to prevent this "indirect encouragement" would constitute an Establishment Clause violation. So, in order to prevent Coach Kennedy's prayer from causing any purported "indirect encouragement" for unwilling students to pray with him, Bremerton directed that his prayers must be "physically separate from any student activity, and students may not be allowed to join such activity." JA45.[8]

Therefore, although not entirely clear, the District's argument seems to be as follows. 1) Many players (perhaps a majority) have chosen voluntarily to join Coach Kennedy in his midfield prayers. 2) A few other players who ordinarily would not choose to join in prayer, may feel awkward or uncomfortable separating themselves from the team and experience peer pressure to join. 3) If the District does not prevent *all* players from joining Coach Kennedy in

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[7] After it suspended Coach Kennedy, the District claims that it heard "from players' parents that their children felt 'compelled to participate.'" Bremerton Brief in Opposition to the Petition for Certiorari at 2, 5. The nature of this alleged "compulsion" appears to be what would best be described as "peer pressure." For example, Bremerton states that a couple of players "participated in the team prayers only because they did not wish to separate themselves from the team." *Id.* at 5.

[8] Stating that "students may not be allowed to join such activity" would appear to violate Board Policy 2340 because it would require Kennedy to actively discourage students from engaging in devotional activity. *See*, note 4, *supra*.

prayer, some may join reluctantly. 4) If this happens, the District may be held liable for violating the federal "constitutional rights" of those students who do join reluctantly, or perhaps even those who do not join, but are made uncomfortable by the sight of people in prayer.

Before delving into the specifics of this argument, it is important to note that there are no student *plaintiffs* who claim to have been injured by Coach Kennedy's brief prayer of thanksgiving.[9] Instead, this Court is presented with a claim *by Bremerton* that it *must* infringe upon the constitutionally protected free speech and religious liberties of Coach Kennedy and those students who wish to pray with him in order to protect a few other students from some subjective infringement of their undefined rights. To do otherwise, Bremerton claims, would violate the Establishment Clause.

But, the nature of the student rights sought to be protected and the source of the alleged harm to these students is left unexplored. What are the contours of these supposed "rights" of students that are sought to be protected by Bremerton? Do students have a constitutional right not to feel *peer pressure* to pray as Bremerton asserts? Do they have a generalized constitutional right not to feel "alienated" or "separated"? Or, do they simply have a right not to

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[9] Were there any student plaintiffs, they would have been obliged to at least try to articulate what their alleged rights are and how those rights have been harmed.

view a devout Christian praying because it causes them discomfort?

Likewise, what is the *source* of the harm allegedly inflicted on these "rights"? Does it arise from each student's own subjective sensibilities? For example, do those most susceptible to peer pressure experience harm while others capable of resisting it remain unharmed? Or, does their harm arise simply from the choice of their *peers* to pray and their own desire not to be separated from their friends who have chosen to pray? [10]

And, can any of these alleged "harms" be *attributed to a state actor*? The students who wish to pray and are allegedly causing other students to feel pressure to join them are certainly not state actors. But, if this is the case, there can be no *state* coercion—subtle or otherwise—from their "indirect encouragement."

Most importantly, are any of these ill-defined "rights" and "harms" that are based on vague and malleable "feelings" sufficient to override the clear constitutionally protected rights of Coach Kennedy and those students who wish to join him in religious

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[10] Presumably, students would have a right to engage in a student-initiated prayer huddle before a game. But, allowing this would have the same potential for "peer pressure" that is objected to here. So, in effect, Bremerton is choosing to elevate the "rights" of a few players to avoid unspecified *feelings* of peer pressure over the constitutionally protected religious liberties of other students to pray.

expression? To even ask the question seems to answer it. And, if there is any doubt remaining, simply removing these questions from the context of religious expression and placing them, instead, in the context of similar, but non-religious, expression should dispel that doubt.

Take, for example, the expressive conduct associated with those who take a knee in protest during the National Anthem. It is doubtful that the District would attempt to place any restrictions on this type of *non-religious* expression, let alone demand that it take place out of view of anyone.[11] Yet, this is what the District is claiming it must do with respect to Coach Kennedy's religious expression—based on a claimed constitutional duty to protect students from peer pressure to join in that expression.

Surely, some students who might not agree with the take-a-knee protest message have felt peer pressure to join in that protest and may have done so reluctantly. But, *peer* pressure, alone, cannot form

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[11] Indeed, if it were to attempt to do so, it would no doubt be sued for violating the free speech rights of such coach or player. See e.g., *V.A. v. San Pasqual Valley Sch. Dist.*, No. 17-cv-02471 (S.D. Cal. Dec. 21, 2017) (Preliminary injunction issued against the defendant school district for refusing to allow a high school football player to take a knee in protest during the National Anthem.) No appeal was taken, and an award of approximately $195,000 in attorneys' fees and costs was assessed against the district. *Id.* (S.D. Cal. Aug. 17, 2018).

the basis for restricting the rights of those who do wish to engage in such protest.

Needless to say, this Court has never recognized any such ill-defined and unquantifiable constitutional "right" to avoid discomfort or be free from any exposure to religious expression on school premises. Indeed, the Court has rejected the notion that school officials can justify the prohibition of a particular expression without showing "something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker v. Des Moines Indep. Sch. Dist*, 393 U.S. 503, 509 (1969).

As society has become more secular, religious expression of any kind, seemingly has become increasingly unpopular. Hence the need to guard it more carefully from attempts to restrict it. The First Amendment does not command government to "purge from the public sphere all that in any way partakes of the religious." *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring).

Given that Bremerton could not have violated the Establishment Clause by virtue of merely allowing Coach Kennedy's religious expression, its sweeping ban on that expression is forbidden by the Free Speech Clause and Free Exercise Clause and Bremerton lacks any legitimate interest in restricting that expression.

III. Bremerton's Sweeping Suppression of Religious Expression Exhibited Hostility Toward Religion in Violation of the Constitution.

Bremerton may not single out religious expression for *less favorable* treatment than it would provide for other, non-religious expression. *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Espinoza v. Mont. Dep't. of Revenue*, 140 S. Ct. 2246 (2020).

The Establishment Clause does not require government entities to root out and ban what Bremerton views as "indirect encouragement" of religion due to peer pressure. And, the fact that Bremerton would not ban similar, but non-religious, expression in the same manner as it seeks to do here exposes and highlights its actual hostility toward religious expression. There is "no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." *Zorach v. Clauson,* 343 U.S. 306, 314 (1952).

The notion that a total separation of church and state is a goal that can be achieved through absolute neutrality is an illusion. When government

attempts to achieve this goal through a "brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious," it violates the Constitution. *Abington v. Schempp,* 374 U.S. 203, 306 (1963) (Goldberg, J. concurring). The common purpose of the Religion Clauses "is to secure religious liberty." *Engel v. Vitale*, 370 U.S. 421, 430 (1962). One Clause was not intended to be used to negate the other.

Where, as here, there is no actual sponsorship of religious expression and no coercion of any kind, government must cease searching for other ways to suppress religious expression in an attempt to achieve absolute neutrality. This Court has warned that doing so runs the "risk [of] fostering a pervasive bias or hostility to religion, which, could undermine the very neutrality the Establishment Clause requires." *Rosenberger v. Rector*, 515 U.S. 819, 845-846. (1995). Whether intentionally or not, Bremerton exhibits an intolerance for religious expression in the public realm by seeking to protect some students from discomfort or unpleasantness at the expense of trampling on the religious liberties of others.

Moreover, in attempting to do this, the District bestows on those students who are most sensitive to peer pressure or most intolerant of religious

expression, a veto power over the constitutionally protected religious liberties of Coach Kennedy and those students who wish to pray with him. Such a third party veto is not permitted in the non-religious speech context. *Terminiello v. Chicago*, 337 U.S. 1 (1949) (breach of the peace ordinance that provided an effective heckler's veto of protected speech held unconstitutional). Likewise, this Court has declined to "employ Establishment Clause jurisprudence" to provide a "modified heckler's veto" under which "religious activity can be proscribed." *Good News Club*, 533 U.S. at 119.

"[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Rev. Bd v. Pinette*, 515 U.S. 753, 760 (1995). And, the Establishment Clause cannot be used to allow or require religious expression to be treated *less* favorably than other protected speech without placing government in a position hostile to religion, which the Establishment Clause forbids.

Yet, this is precisely what Bremerton has done. So, in the end, it has succeeded in doing what both the Free Exercise and Establishment Clauses forbid.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

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