

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

MOTION OF AMICI CURIAE CITY, COUNTY, AND LOCAL PUBLIC EMPLOYER
ORGANIZATIONS FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AND FOR
DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, amici curiae City, County, and Local Public Employer Organizations* respectfully move that they be granted leave to participate in the oral argument in this case and that amici be allowed ten minutes of argument time. Amici curiae have filed an amici brief supporting respondent. Respondent has consented to this motion and agreed to cede ten minutes of its argument time to amici.

This case presents questions arising from respondent school district's suspension of petitioner, a high-school football coach, for engaging in post-game, midfield prayers while he was on duty with students in his charge and after a years-long history of leading prayers with students. The constitutionality of respondent's disciplinary action turns on the scope of petitioner's official duties under this Court's decision in Garcetti v. Ceballos, 547 U.S. 410 (2006), and, assuming that petitioner's expression was private, whether it implicated Establishment Clause constraints because of a reasonable observer's objective understanding of his course of conduct.

Amici have a substantial interest in these questions. Amici are six organizations that represent thousands of local

* Amici are: The National League of Cities, U.S. Conference of Mayors, International City/County Management Association, International Municipal Lawyers Association, National Public Employer Labor Relations Organization, and International Public Management Association for Human Resources.

governments across the country. As public employers, the cities, counties, school districts, and other governmental bodies that amici represent have a responsibility to the public to ensure the effective and lawful functioning of their workplaces while respecting public employees' free-speech and free-exercise rights. The extent to which public employees' on-duty expression receives First Amendment protection, and the extent to which governments may act to avoid Establishment Clause violations, have important consequences for amici. Amici therefore have a substantial interest in the proper interpretation and application of the relevant First Amendment principles in this case.

Amici's nationwide perspective on the issues in this case would make their participation in oral argument of material assistance to the Court. Amici's members routinely encounter the issues in this case as they arise in a variety of contexts -- including, but extending beyond, schools. The First Amendment principles articulated in this case will apply to all government employers, and they will govern the resolution of these issues for public employees across the country. Amici's experience would aid the Court's understanding of how these principles apply across a wide spectrum of public-employment contexts.

Amici have frequently filed amici briefs in this Court in a wide range of cases involving public-employment, free-speech, and religion-clause issues related to the ones presented here. See,

e.g., Shurtleff v. City of Boston, No. 20-1800 (argued Jan. 18, 2022); Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021); Maryland-National Capital Park and Planning Commission v. American Humanist Association, 139 S. Ct. 2067 (2019); Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018); Lane v. Franks, 573 U.S. 228 (2014); Garcetti v. Ceballos, 547 U.S. 410 (2006). They also have substantial experience in the interpretation and application of those cases in the lower courts. Amici's participation in oral argument would therefore permit the Court to explore the broader experience of public employers as it considers the issues in this case.

Respectfully submitted.

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