

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 COURTS OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF FOR AMICI CURIAE RELIGIOUS AND
DENOMINATIONAL ORGANIZATIONS AND BREMERTON-
AREA CLERGY SUPPORTING RESPONDENT**

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INTERESTS OF AMICI CURIAE

Amici are religious organizations, denominational organizations, and Bremerton-area clergy.* They comprise different religions (including Christianity, Judaism, Islam, and Hinduism) as well as different denominations of Christianity. As individuals and organizations who practice, facilitate, and lead a variety of religious traditions, their commitment to and concern for the free exercise of religion goes without saying. That is why they support Bremerton School District in this case.

* As required by Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici and their counsel made a monetary contribution to its preparation or submission. All parties have provided blanket consent for the filing of amici curiae briefs.

The school district took reasonable steps to ensure that a public-school football coach did not—by publicly leading the school’s football team members in group prayer immediately after the school’s football games—use the power of his government position to impose his religious beliefs and practices on his students. These religiously diverse students are entitled to decide when, where, and how to pray, and which prayers to say. Without robust protections for freedom of conscience, *amici* could not fulfill their missions, practice their faith, or minister to their faithful. As a result, they commend the school district for defending its students’ rights to follow their own consciences and pray according to their own religious beliefs.

The full set of amici curiae is listed in the Appendix.

SUMMARY OF ARGUMENT

The First Amendment requires school districts to protect their students’ religious freedom, including and especially their right to free exercise. That right enables Bremerton’s students and student-athletes to practice their religions, through prayer or otherwise, free from interference by government officials, including public-school coaches. Yet for nearly a decade, Bremerton football coach Joseph Kennedy undermined students’ religious freedom when, immediately after school football games, he knelt on the 50-yard line, bowed his head, and led his students in Christian prayer. Upon learning about a powerful school official’s on-the-job practice of leading student athletes in public group prayer, the school district was both permitted and required to protect its students’ religious freedom and ensure that the school official stopped pressuring his religiously diverse students to conform to his handpicked religious prayers and practices.

Had Bremerton officials stood by, Bremerton's student athletes would have continued to suffer dual injuries to their freedom of conscience. For one, they would have faced acute pressure to join Coach Kennedy's group prayer, because they depend on Coach Kennedy for guidance, support, and playing time. Meanwhile, student athletes who resisted the pressure to join the coach-led prayers would have exposed themselves to harassment, bullying, and other abuse from both classmates and teachers.

First, when a public-school coach leads his students in public prayers at public-school events, that coach abridges his students' religious liberty. Student athletes face intense pressure to violate their religious consciences by joining public prayers chosen by their coach. Few of these students would dare defy their coach by publicly opting out of their coach's group prayer. That is what happened here: Some Bremerton students felt coerced into participating in the group prayers led by Coach Kennedy.

Second, student athletes who do resist the inherent pressure to join the coach's prayers suffer a related free-exercise harm. Students who visibly opt out of their coach's group prayer risk being harassed and bullied, by both students and teachers. Religious minorities, who already are frequent targets of bullies, bear yet more risk. In sum, by forcing student athletes to publicly opt out of group prayers, Coach Kennedy levies a painful tax on those students' free-exercise rights, including the right to pray according to their own religious beliefs rather than those of their coach.

Public officials may not, through either word or deed, force students to barter their religious freedom for athletic opportunity or a lower risk of getting bullied. By stopping Coach Kennedy from leading his student athletes in group prayer at high-profile school events, the

school district acted properly to preserve those students' most cherished free-exercise rights.

ARGUMENT

I. The school district preserved student athletes' freedom to pray according to their own religious beliefs rather than submit to the religious preferences of their coach.

Coach Kennedy claims the right to kneel on the 50-yard line, bow his head, and lead his student athletes in Christian prayer immediately after their school football games. The school district, however, correctly recognized that when he led his students in his preferred prayer, he produced intolerable pressure on his religiously diverse students to submit to their coach's religious beliefs and practices at the expense of their own. See Ori Z. Soltes, *Language and Prayer Within Judaism, Christianity and Islam*, 2 Religions 74, 78 (2012).

A. Although most Bremerton residents are Christians, some practice other faiths. See Ass'n of Religion Data Archives, *Kitsap Cty., Washington: Religious Traditions* (2010), <https://perma.cc/KH9T-4SEJ>. Bremerton is part of Kitsap County, home to Bahá'ís and Buddhists, Muslims and Jews, Hindus and Sikhs, and Zoroastrians. See, e.g., *ibid.*; *Kitsap Sikh Temple*, <https://perma.cc/8CUY-7SHH> (located in Bremerton, WA); *Islamic Center of Kitsap County*, Prayers Connect: Mosques & Time Discovery, <https://perma.cc/8EBP-J8MM> (same). In addition, the county's diverse Christian congregations include Catholics, Episcopalians, Baptists, Methodists, Lutherans, Anglicans, Unitarians, and Presbyterians. See Ass'n of Religion Data Archives, *supra*.

When leading his student athletes in prayer on the 50-yard line, Coach Kennedy prayed in a manner consistent with his own religious beliefs: By kneeling, clasping his

hands, and bowing his head, he used the “personal body language in prayer” adopted by “most Christian traditions.” Oddbjørn Leirvik, *Prostrate and Erect*, 16 Stud. Interreligious Dialogue 29, 36 (2006).

Students who practice one of Bremerton’s many other religions or denominations would promptly identify the differences between their own prayer practices and the prayers led by their coach. Jews, for example, usually stand rather than kneel when praying. See Joshua Rabin, *Physical Movement in Jewish Prayer*, My Jewish Learning, <https://perma.cc/7B6K-RYKK>; Baruch S. Davidson, *Do Jews Kneel in Prayer?*, Chabad.org, <https://perma.cc/BVT7-Z2BK>. Indeed, from Christianity’s early days, Christians diverged from Jews by “falling to the knees in the course of prayer.” Soltes, *supra*, at 82. Hindus and Buddhists often sit cross-legged in the lotus position when praying, but the former position their arms and hands differently than do the latter. See Eric Sarwar, *Postures of Prayer in Worship*, Reformed Worship (July 13, 2015), <https://perma.cc/8ADD-RF4C>. Muslims prostrate themselves during prayer, and they also stand and bow. See Leirvik, *supra*, at 37. Prostration and bowing are part of Bahá’í prayers, too, but Bahá’ís kneel rather than stand. See *Long Obligatory Prayer*, Bahá’í Prayers, <https://perma.cc/H49W-N5KR>.

These differences in prayers’ content and form reflect fundamental differences in the belief systems of different faiths. See generally Huston Smith, *The World’s Religions* (50th anniversary ed. 2009). A Jewish or Muslim student cannot join her coach’s Methodist prayer without compromising her own religious tenets, and vice-versa. Even within Christianity, members of different denominations or congregations may worship in different ways. To protect their students’ free exercise of religion, then,

public schools must ensure that no student is compelled to deliver prayers at odds with her conscience.

B. In seeking to protect the free-exercise rights of its student athletes, the Bremerton school district recognized that coaches have unique power over their student athletes, who view their coaches as mentors and role models and whose current and future athletic careers compel them to keep their coaches happy. Given this power, coaches can compel student athletes to participate in group prayer even without explicitly ordering them to do so.

Indeed, Coach Kennedy recognizes his influence over his student athletes, and he leads group prayers to wield that influence. Some students, he concedes, are influenced more by their coaches than by their classroom teachers, and “the coach might even be the most important person they encounter in their overall life.” JA323–324. He sees himself as “a mentor and role model” and his actions at games “always set[] some kind of example to the kids.” JA323, 327. And he believes that joining his prayers “help[s] these kids be better people.” JA73–74. Coach Kennedy’s lawyer is even more candid about how his client reinforces his religious message with his status as a coach: Members of the football team “are looking up to the coach. * * * That’s precisely why Coach Kennedy wants to do what he does.” JA368.

Coaches have direct power over students as well. A brand-new linebacker may not want to join the coach’s group prayer, but also can’t afford to disappoint the coach. Because he decides who stays on the field and who sits on the bench, “[t]he coach is the most important person in determining the quality and success of an athlete’s sport experience.” Jean M. Williams et al., *Factor Structure of the Coaching Behavior Questionnaire and its Relationship to Athlete Variables*, 17 *Sport Psych.* 16, 16 (2003).

Because they depend on their coaches for athletic satisfaction, student athletes will feel corresponding pressure to satisfy their coaches by joining in their group prayers, even if those students' religious beliefs require them to pray at a different time, in a different place, or in a different manner.

C. Several Bremerton parents confirmed that their children reluctantly joined Coach Kennedy's group prayers to avoid antagonizing him or their teammates. The school district heard from parents "whose children had participated in the team prayers only because they did not wish to separate themselves from the team." JA356. One parent explained that his son "had felt compelled to participate, because even though he was atheist, he felt he wouldn't get to play as much if he didn't participate." JA234 (internal page number omitted). Conversely, after the school district instructed Coach Kennedy to stop leading students in prayer, "several students and parents * * * expressed thanks for the District's actions and described how [his] prior practice had put them or their children in awkward situations where they did not feel comfortable declining to join with the other players in [the coach's] prayers." JA359.

Equally telling is how students reacted after Coach Kennedy stopped leading group prayers. Without prompting from their coach, "no players appeared to be praying after games." JA181. The players may well have prayed on their own time; or privately at home; or with their families; or at a church, synagogue, mosque, or gurdwara; or with a group of friends after the crowd left; or on a different day. And they may have preferred to say different prayers or place their bodies in different postures.

By preventing a powerful authority figure from publicly inducing his student athletes to join his group prayers, the school district revived those students' genuine

right to free exercise: To pray in a manner consistent with their own religious beliefs, without needing to adopt the religious practices of their coach. If the school district is compelled to permit Coach Kennedy to lead his student athletes in prayer, those students will again feel compelled to choose the coach’s prayers over their own.

II. The school district protected student athletes from harassment, bullying, and other retaliation targeting students who decline to participate in public, coach-led prayer.

Students who withstand the pressure to join coach-led group prayer also risk losing their free-exercise rights. As visible religious dissenters, those students become tempting targets for bullies—and those bullies may be teachers as well as students. That is a high price for students to pay for the privilege of staying true to their faith.

A. All too often, bullies target victims based on their religion. In 2017, “42% of Muslims, 23% of Jews, and 6% of Catholics reported that at least one of their children had been bullied in the past year because of their religion.” Nadia S. Ansary, *Religious-Based Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit 4* (2018), <https://perma.cc/DP3G-89GH>. Other data suggests that more than half of Muslim and Sikh students have been bullied for religious reasons. Dalia Mogahed & Erum Ikramullah, Inst. for Social Pol’y & Understanding, *American Muslim Poll 2020: Amid Pandemic and Protest 7* (2020), <https://perma.cc/LT7P-WNR7>; Sikh Coalition, “*Go Home, Terrorist: A Report on Bullying Against Sikh American School Children 5* (2014), <https://perma.cc/E4Y4-AM4X>. Likewise, one in three Hindu students have been bullied because of their religious beliefs. Murali Balaji et al., Hindu Am. Found., *Classroom Subjected: Bullying & Bias Against Hindu*

Students in American School 1 (2016), <https://perma.cc/GF3S-994W>.

Even worse, religious minorities are regularly bullied by teachers. For example, in at least one-fourth of reported incidents in which Muslim students were bullied, the bully was a teacher or administrator. See Mogahed & Ikramullah, *supra*, at 7; Dalia Mogahed & Youssef Choudhoud, Inst. for Social Pol’y & Understanding, *American Muslim Poll 2017: Muslims at the Crossroads* 12–13 (2017), <https://perma.cc/BL7T-9FYE>.

By declining to join a football coach’s high-profile group prayers, these already vulnerable students raise their risk of bullying even higher. School bullies target victims most often because they “didn’t fit in.” See, *e.g.*, John H. Hoover et al., *Bullying: Perceptions of Adolescent Victims in the Midwestern USA*, 13 Sch. Psychol. Int’l 5, 14 (1992). The perceived ill fit will become more widely apparent when religious minorities on the football team, cheerleading squad, or marching band decline to participate in the public, group prayer sponsored by the coach immediately after a well-attended game.

B. We need not speculate to envision these harms. Student athletes and cheerleaders at other public schools became victims of nasty bullying after objecting to or declining to participate in coach-led prayer.

1. In 2005, parents of certain cheerleaders at New Jersey’s East Brunswick High School complained to school officials that the football coach was leading students in prayer before games. *Borden v. Sch. Dist.*, 523 F.3d 153, 184 (3d Cir. 2008) (McKee, J., concurring). When students learned about these complaints, they blamed two Jewish cheerleaders. *Ibid.* Soon, “those cheerleaders were publicly ridiculed by other students at athletic events, and the cheerleading squad was taunted, bullied, and booed.” *Ibid.* (citation omitted).

The cheerleaders were then disparaged and threatened on a student blog; after the head coach resigned, the blog published several posts under the heading, “Jewish Cheerleaders who suck!!!” *Ibid.* (internal quotation marks omitted). The anti-Semitic posts included the complaint that “[f]irst they crucify Jesus, then they got Borden fired.... Jews gotta learn to stop ruining everything cool.” *Ibid.* (internal quotation marks omitted).

2. A few years earlier, a student athlete at a Duncanville, Texas middle school was harassed and bullied—by students and teachers—because she stopped participating in coach-led prayers, including the Lord’s Prayer, at basketball games. At first, she joined the prayers “because she did not wish to single herself out.” *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 404 (5th Cir. 1995). After her father assured her that she was not required to join the prayer, she opted out at the next game. *Ibid.*

She was promptly harassed by classmates—who asked, “Aren’t you a Christian?” *Ibid.* (internal quotation marks omitted). And by a spectator—who called out, “Well, why isn’t she praying? Isn’t she a Christian?” *Ibid.* (internal quotation marks omitted). And in history class, by her teacher—who called her a “little atheist.” *Ibid.* (internal quotation marks omitted). The backlash arrived even though she had not affirmatively objected to the coach’s practice and had merely stood by, silently, as the rest of the team followed the coach’s lead.

3. Then there was the school district’s response to the plaintiffs who challenged student-led prayer at football games held at Santa Fe Independent School District. After the district court permitted the plaintiffs to proceed anonymously to minimize the risk of violent threats or harassment, school-district officials tried to identify them. See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 294 n.1 (2000). A month into the case, the district court had to

order school district officials to stop “taking any action on school property, during school hours, or with school resources or approval for purposes of attempting to elicit the names or identities of the plaintiffs.” *Ibid.* (capitalization altered). These steps were necessary to allow the plaintiffs’ claims to be “addressed on their merits, and not on the basis of intimidation or harassment of the participants on either side.” *Ibid.*

Needless to say, “church-state cases are volatile.” Benjamin P. Edwards, *When Fear Rules in Law’s Place*, 20 Va. J. Soc. Pol’y & Law 437, 463–466 (2013) (capitalization altered) (detailing how opponents of government-sponsored religious exercise have experienced “Arson,” “Death Threats,” “Physical Assaults,” “Proxy Violence,” and “Extreme Ostracization”). Given that students resist school-sponsored prayers at their peril, the school district properly instructed Coach Kennedy to stop putting his student athletes in that untenable position.

C. The community’s response to objections to Coach Kennedy’s group prayer confirms the risks faced by those who object or opt out, and reinforces that the school district needed to protect students’ free-exercise rights by halting Coach Kennedy’s most coercive conduct.

After the school district instructed Coach Kennedy to stop leading students in group prayer, “tempers flar[ed] after games.” JA223–227. Verbal abuse and threats against Bremerton’s head football coach were so severe that he worried he “could be shot from the crowd.” JA347. The head coach feared not only for his own safety, but that of football players, cheerleaders, and band members. JA346–347. He did not reapply once his contract expired, because disputes over Coach Kennedy’s conduct had produced an “unsafe situation.” JA345–347.

One parent, who happened to work for the school district, published an essay lamenting the likelihood of retaliation against students who declined to participate in Coach Kennedy's prayers. As a student, she had objected to school-sponsored Christian prayers at her high school's football games; in response, she had been harassed, bullied, and dubbed a "Satanist." Tim Peacock, *School Employee Speaks Out After HS Football Coach Prays with Students*, Peacock Panache (Sept. 22, 2015), <https://perma.cc/67R9-8AVJ>. As a parent years later, she feared that her "son and his friends in band, or other students in other activities, will face peer pressure to pray in front of others, or worse, face retaliation if they do not." *Ibid.* She too was retaliated against: Community members launched a Facebook page to press the school district to fire her. *Ibid.*

The community's reaction to objections to Coach Kennedy's public group prayer epitomizes the harassment, bullying, and retaliation likely to greet students who object to—or merely opt out of—school-sponsored prayers. It confirms that the school district acted appropriately to reduce the risk to students from Coach Kennedy's coercive group prayer.

D. For students who are bullied after declining to join coach-sponsored prayers, the present and future side effects can be serious. Bullying victims suffer from "poorer social and emotional adjustment," "greater difficulty making friends, poorer relationships with classmates, and greater loneliness." Tonja R. Nansel et al., *Bullying Behaviors Among US Youth: Prevalence and Association with Psychosocial Adjustment*, 16 JAMA 2094, 2098 (2001). People bullied as students are more likely to be depressed and have lower self-esteem as adults—even if the actual bullying stopped before adulthood. *Id.* at 2099. This data may understate the harms, because bullying over

identities like race, gender, or religion “can have significantly more harmful mental health and social effects for targeted youth.” Am. Educ. Rsch. Ass’n, *Prevention of Bullying in Schools, Colleges, and Universities* 31 (2013), <https://perma.cc/UN7Y-XQ3W>.

Finally, religiously motivated bullying chills religious exercise. Students craving relief from religion-based bullying may hide or downplay their faith. See, e.g., Ansary, *supra*, at 10 (Sikh student “cut his hair and no longer wears the turban—actions that run counter to prescriptions of the Sikh faith”). Indeed, religious conflict in schools erodes not only students’ mental health and emotional stability, but also their religious identities. See Shanda S. Forrest-Bank & David R. Dupper, *A Qualitative Study of Coping with Religious Minority Status in Public Schools*, 61 *Child. & Youth Servs. Rev.* 261, 262–263, 269 (2016). Given the prospect of lasting harm to students’ psyches and souls, the school district could not responsibly have allowed a public-school authority figure to override the free exercise rights of the students in his care.

CONCLUSION

The judgment of the United States Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX: LIST OF AMICI CURIAE

1. The Rev. Douglas Avilesbernal (Executive Minister, Evergreen Association of American Baptist Churches)
2. The Rev. Meghan M. Dowling (Pastor, Bremerton United Methodist Church)
3. The Rev. Susan K. Griggs (Tracyton United Methodist Church)
4. The Rev. Richard E. Jaech (Bishop, Southwestern Washington Synod, Evangelical Lutheran Church in America)
5. Student Rabbi Emily Katcher (Congregation Beth Hatikvah)
6. The Rev. Kathleen Kingslight (Rector, St. Paul's Episcopal Church)
7. The Rev. Gregory Reffner (Pastor, Brownsville United Methodist Church)
8. The Rt. Rev. Gregory H. Rickel (Bishop, The Episcopal Diocese of Olympia)
9. ADL (Anti-Defamation League)
10. B'nai B'rith International
11. Central Conference of American Rabbis
12. Christian Methodist Episcopal Church
13. Disciples for Public Witness

14. Disciples Justice Action Network
15. Equal Partners in Faith
16. Faith in Public Life
17. Global Justice Institute, Metropolitan Community Churches
18. Hadassah, The Women's Zionist Organization of America
19. Hindu American Foundation
20. Interfaith Alliance
21. Jewish Council for Public Affairs
22. The Jewish Social Policy Action Network
23. Jewish Women International
24. KARAMAH: Muslim Women Lawyers for Human Rights
25. Men of Reform Judaism
26. Methodist Federation for Social Action
27. Muslims for Progressive Values
28. National Council of the Churches of Christ in the USA
29. National Council of Jewish Women
30. Reconstructionist Rabbinical Association

31. T'ruah: The Rabbinic Call for Human Rights
32. Union for Reform Judaism
33. Unitarian Universalist Association
34. Women of Reform Judaism