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 FLORIDA AND 17 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[*]

Pursuant to Supreme Court Rule 37, the State of Florida, along with 17 other States, respectfully submit this brief as *amici curiae* in support of Petitioner. *Amici* States have interests in ensuring their citizens' rights to freely exercise their religion and in maintaining the proper line between personal expression that is protected by the First Amendment and government speech that is not. *Amici* States also have an interest in clarifying Establishment Clause doctrine to provide clear rules for government action and protect the fundamental role religion plays in our country.

The Eleventh Circuit's opinion below undermines these interests. Its misapplication of government-speech doctrine papers over an aberrant view of the Florida High School Athletic Association (FHSAA) on the scope of the Establishment Clause. Its reliance on *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), also breathes life into a *Lemon*-era Establishment Clause jurisprudence that was disavowed in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). The States therefore submit this *amicus* brief in favor of Petitioner and respectfully ask that this Court grant certiorari to provide needed clarity on these First Amendment issues.

SUMMARY OF ARGUMENT

In 2015, two private Christian high schools advanced to Florida's football championship. Consistent with their religious commitments, both schools asked

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[*] *Amici* timely notified counsel for all parties of its intention to file this brief as required by Supreme Court Rule 37.2.

to recite a pregame prayer over the stadium loudspeaker. *Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n, Inc.*, 115 F.4th 1266, 1277–78 (11th Cir. 2024). The request was unremarkable: FHSAA had approved the same request three years prior, *id.* at 1277, and praying before an athletic event is a tradition older than the Republic itself.[1] Yet FHSAA's executive director declined, explaining that, in his view, such prayer "would violate the Establishment Clause." *Id.* at 1278. He reached that conclusion because "the Supreme Court's decision in *Santa Fe Independent School District v. Doe*"—which prohibited student-led prayer over loudspeakers before high school football games—was "directly on point." *Id.*

The Eleventh Circuit agreed that *Santa Fe* was relevant. In its view, *Santa Fe* instructed courts to view the "context specific inquiry" for government speech narrowly, focusing on pregame speech rather than on other relevant timeframes, such as half-time events or other FHSAA-run championship games. *Id.* at 1288. And having made use of *Santa Fe* to conclude that a pregame speech would be government speech, it then found that Cambridge Christian had no valid Free Exercise right to recite a pregame prayer. *Id.* at 1295–96.

Santa Fe should be overruled. It extended faulty *Lemon*-era Establishment Clause holdings to invalidate student-led prayer before football games. 530 U.S. 290, 301–02 (2000). It mischaracterized student-

[1] In fact, the religious connection to sporting events can be traced back to the ancient Olympic games. *See* Ivo Jirásek, *Religion and Spirituality in Sport*, Oxford Research Encyclopedia of Psychology (Dec. 20, 2018), https://tinyurl.com/2mdkm3m4.

chosen, student-led prayer as a state-led attempt "to exact religious conformity." *Id.* at 312. And the opinion "bristle[d] with hostility to all things religious in public life." *Id.* at 318 (Rehnquist, C.J., dissenting).

Santa Fe's demonstrably erroneous holding has been thoroughly undermined by this Court's later opinions. More recent prayer cases confirm the "traditional understanding that permitting private speech is not the same thing as coercing others to participate in it." *Kennedy*, 597 U.S. 507, 541 (2022) (citing *Town of Greece v. Galloway*, 572 U.S. 565, 589 (2014) (plurality op.)). Indeed, concerns over "social pressure" to partake in a prayer—if that pressure exists at all—hardly constitute an Establishment Clause violation. *See, e.g.*, *Town of Greece*,572 U.S. at 577.

And yet *Santa Fe* lingers, as this case demonstrates. Local officials still rely on its errant Establishment Clause holding, and its reasoning now contorts the lower courts' government-speech doctrine. Consequently, this Court should grant certiorari, overturn *Sante Fe,* and discard its ahistorical and discredited reasoning. *See also* Cert. Pet. 27 ("*Santa Fe* was dubious from the outset," and "this Court should overrule" it.).

ARGUMENT

I. *SANTA FE INDEPENDENT SCHOOL DISTRICT V. DOE* WAS WRONGLY DECIDED AND SHOULD BE OVERRULED.

Public prayer has been integral to the American identity since before the Founding. Cambridge Christian's proposed pregame prayer would have fallen comfortably within this Nation's history and tradition

and therefore should have raised no concerns about violating the Establishment Clause.

But several of this Court's precedents have nonetheless strayed from the original meaning of the Clause. One such case is *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). There, this Court held that student-led, student-initiated prayer over the loudspeakers before varsity football games violated the Establishment Clause. That decision should be overruled. The doctrine of *stare decisis* is "not an inexorable command," *Pearson v. Callahan*, 555 U.S. 223, 233 (2009), and "is at its weakest" in constitutional cases. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264 (2022). When considering overturning precedent, this Court examines "the quality of the decision's reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision." *Ramos v. Louisiana*, 590 U.S. 83, 106 (2020). Each of those factors favors overruling *Santa Fe*.

A. *Santa Fe* is demonstrably erroneous.

The facts underlying *Santa Fe* were anodyne: The Santa Fe school district had a policy that permitted students to elect a student chaplain who, among other things, would give a prayer over the loudspeakers before varsity football games. *See Santa Fe*, 530 U.S. at 296–97. The decision to elect a student chaplain was optional, as was the decision—for practically all students—to attend the football game. *Id.* at 310–11. Those students who chose to attend and listen to the pregame announcements would hear only a brief, solemn prayer about competition, sportsmanship, and student safety. *See id.* at 306–08.

The Court still held that the policy violated the Establishment Clause. *Id.* at 317. Its analysis was typical for a *Lemon*-era ruling and suffered the same "shortcomings associated with th[e] ambitious, abstract, and ahistorical approach to the Establishment Clause" that this Court has since disavowed. *Kennedy*, 597 U.S. at 534.

Santa Fe erred from the start by explicitly leaning on "the principles that [the Court] endorsed in *Lee* [*v. Weisman*, 505 U.S. 577 (1992)]," 530 U.S. at 302—principles that find no support in constitutional text or history. *Lee* invalidated a public high school's practice of having a clergy member deliver a brief prayer at graduation. 505 U.S. at 599. Driving much of the Court's analysis was an underlying view that "preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Id.* at 589. It concluded that the "subtle coercive pressures" students might face by passively listening to a prayer were sufficient to violate the Establishment Clause—a claim it grounded in "[r]esearch in psychology" regarding adolescent development and susceptibility to peer pressure. *Id.* at 588, 593; *see also Santa Fe*, 530 U.S. at 311.

Each link in the Court's chain of reasoning was flawed. The Court's journey into psychological research placed it firmly "beyond the realm where judges know what they are doing." *Lee*, 505 U.S. at 636 (Scalia, J., dissenting). And the Court's assertion that religion is best left to the private sphere was "oblivious to our history" and the "longstanding American tradition of nonsectarian prayer to God at public celebrations." *Lee*, 505 U.S. at 632, 633–36 (Scalia, J., dissenting) (collecting examples). Among countless

other instances, "George Washington deliberately made a prayer a part of his first official act as President," thanking "that Almighty Being who rules over the universe," *id.* at 633; similarly, "the First Congress, as one of its early items of business, adopted the policy of selecting a chaplain to open each session with prayer," *Marsh v. Chambers*, 463 U.S. 783, 787–88 (1983). And this tradition includes prayer in school settings: "[D]ating from the early nineteenth century, at least eight states had some history of opening prayers at school-board meetings." *Am. Humanist Ass'n v. McCarty*, 851 F.3d 521, 527 (5th Cir. 2017). *Lee* engaged with none of it.

Sante Fe's own reasoning fares no better. The Court found that because attending football games is required for a small subset of students (including the players and band members), and more generally because attending games is part of the "complete educational experience," permitting a brief prayer before the game was unconstitutional. 530 U.S. at 311. The Court characterized such prayer as a nefarious attempt to "exact religious conformity from a student as the price of joining her classmates at a varsity football game." *Id.* at 312. To get there, it shrugged off the facts (1) that the student body voted to permit the invocation, (2) that the student body elected a student chaplain, and (3) that this *student*—not an official—delivered the prayer. *Id.* at 296–98, 309–10.

Looming throughout the majority's analysis was a "hostility to all things religious in public life." *Id.* at 318 (Rehnquist, C.J., dissenting). *Santa Fe* closed the public square to a practice dating back to "George Washington himself," *id.*, without meaningfully engaging with the Nation's longstanding history and

tradition of prayer before public events. The opinion is demonstrably erroneous.

B. Later opinions have fully rejected *Santa Fe*'s rationale.

Santa Fe's flawed reasoning has only been confirmed by this Court's later Establishment Clause case law. *See Ramos*, 590 U.S. at 106 (reversing precedent in part when "later developments" had "done more to undermine the decision"). Two cases make this point particularly clear.

The first is *Town of Greece v. Galloway*, 572 U.S. 565, 589 (2014). In *Town of Greece*, this Court held that a town's practice of prayer before its monthly board meetings did not violate the Establishment Clause. 572 U.S. at 569. The Court made clear that, contrary to *Santa Fe*, the "Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 576 (quotation marks omitted). Legislative prayer traces back to the country's founding, so the Court had little trouble finding that the town's practice was consistent with the historical tradition. *Id.* at 576–77, 588–92.

Town of Greece not only rejected the general Establishment Clause methodology used by *Santa Fe*, but it also rejected specific arguments *Santa Fe* relied on. First, *Santa Fe* found that public prayer imposed impermissible pressure on someone to violate their own beliefs. 530 U.S. at 312.[2] *Town of Greece* rebuffed

[2] *Santa Fe* emphasized the distinct vulnerability of children to coercion, but *Town of Greece* still found the prayers permissible despite "the occasional attendance of students." 572 U.S. at 599 (Alito, J., concurring).

that idea, instead affirming that "an Establishment Clause violation is not made out any time a person experiences a sense of affront from the expression of contrary religious views." 572 U.S. at 589.

Town of Greece furthermore disposed of the ahistorical assumption, which is belied by the communitarian nature of so much of human religious experience, that "preservation and transmission of religious beliefs" should be relegated to the "private sphere." *Santa Fe*, 530 U.S. at 310. *Town of Greece* confirmed that prayer in these settings "has become part of the fabric of our society" and "that willing participation in civic affairs can be consistent with a brief acknowledgment of [many Americans'] belief in a higher power." 572 U.S. at 576, 591.

The second case that marks a clear retreat from *Santa Fe* is *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022). In *Kennedy*, the Court found that a high-school football coach's practice of prayer at midfield after football games did not violate the Establishment Clause. 597 U.S. at 532. To reach this conclusion, *Kennedy* recognized that *Lemon v. Kurtzman*, a case essential to *Santa Fe*'s holding, had long-since been abandoned. *Id.* at 534. *Lemon* and *Santa Fe* rested on the now-discredited notion that the Establishment Clause "compel[led] the government to purge from the public sphere anything an objective observer could reasonably infer endorses or partakes of the religious." *Id.* at 535 (quotation marks omitted). In fact, *Kennedy* dismissed this line of reasoning as "a sure sign that our Establishment Clause jurisprudence had gone off the rails." *Id.* at 540.

Like *Town of Greece*, *Kennedy* clarified that conjectural concerns about the coercive effect of students' observing the voluntary prayer of another do not sustain an Establishment Clause violation. *Id.* at 538. Rather, "learning how to tolerate speech or prayer of all kinds is part of learning how to live in a pluralistic society, a trait of character essential to a tolerant citizenry." *Id.* (quotation marks omitted).

Together, *Town of Greece* and *Kennedy* confirm that *Santa Fe*'s methodology and presumptions about the role religion plays in this country are not reconcilable with the Establishment Clause. *Santa Fe*'s oscillation between *Lemon*-style analysis and student psychology research, *see, e.g.*, 530 U.S. at 311–12, 314, cannot be squared with the "historical practices and understandings" that rightly inform the meaning of the Establishment Clause, *Town of Greece*, 572 U.S. at 566. *Santa Fe* and cases like it also watered down the high bar of unconstitutional coercion into a "modified heckler's veto," in which the government must step in to proscribe religious activity based on "perceptions or discomfort." *Kennedy*, 597 U.S. at 534. This contravenes the animating concern of the Religion Clauses of the First Amendment, which is to protect the freedom of religion.

C. Lower courts continue to rely on *Santa Fe*.

Santa Fe's analysis and key holdings were erroneous when it was issued and have been thoroughly undermined since. Yet litigants and lower courts remain "bound by even" this Court's "crumbling precedents." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 406 (2024).

The story of *Lemon*'s refusal to die is Exhibit A for why formally overruling *Santa Fe* is necessary. *See Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 398 (1993) ("Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again[.]") (Scalia, J. concurring, joined by Thomas, J.). The foundations of *Lemon* had been eroding for decades, but lower courts nevertheless felt obligated to trudge through its three-part test. *See, e.g.*, *Freedom from Religion Found., Inc. v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1149 (9th Cir. 2018) ("The *Lemon* test remains the dominant mode of Establishment Clause analysis."); *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 283 (3d Cir. 2011) ("Because *Lemon* has not been overruled, we will apply it here."); *Books v. Elkhart Cnty.*, 401 F.3d 857, 862–63 (7th Cir. 2005) ("Despite persistent criticism from several of the Justices, *Lemon* has not been overruled, and we are compelled to follow the approach it established.") (footnote omitted). It was only in *Kennedy*, in 2022, that this Court formally overruled *Lemon* and released lower courts from the Sisyphean task of using it. *Kennedy*, 597 U.S. at 534.

Santa Fe has likewise stubbornly persisted. Despite its weakened doctrinal foundations, lower courts have decided case after case on the strength of its Establishment Clause holding.[3] *See, e.g.*, *Freedom from*

[3] In other cases, however, lower courts laudably have embraced the Establishment Clause test required by *Kennedy*: "[T]o prevail on her Establishment Clause claim, [a plaintiff] must show that the [challenged conduct or practice] resembles one of the[] hallmarks of religious establishment." *Hilsenrath ex rel. C.H. v. Sch.*

Religion Found., Inc., 896 F.3d at 1150 (relying in part on *Santa Fe* to invalidate the practice of prayer before school board meetings); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 593–96 (4th Cir. 2017) (relying in part on *Santa Fe* to invalidate executive order restricting travel to the United States from a list of designated countries), *vacated as moot*, *Trump v. Int'l Refugee Assistance Project*, 583 U.S. 912 (2018). *Santa Fe*'s continued impact on the courts below only confirms the need for this Court to formally overrule it.

D. Reliance interests do not warrant retaining *Santa Fe*.

Stare decisis protects "the interests of those who have taken action in reliance on a past decision," *Dobbs*, 597 U.S. at 263, but government officials and citizens have not relied on *Santa Fe* in a way that warrants its survival. "Traditional reliance interests arise where advance planning of great precision is most obviously a necessity." *Id.* at 287 (quotation marks omitted). Correction of erroneous precedent on the application of the Establishment Clause to student-led prayer will not unravel years of careful event planning; school officials will simply adjust in how they respond to student initiatives in the future. *See Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S.

Dist. of Chathams, 136 F.4th 484, 491 (3d Cir. 2025) (Hardiman, J.); *see id.* n.54 ("[W]e agree with our sister circuit that under *Kennedy*, 'the plaintiff has the burden of proving a set of facts that would have historically been understood as an establishment of religion.'" (quoting *Firewalker-Fields v. Lee*, 58 F.4th 104, 122 n.7 (4th Cir. 2023))).

672, 695 (1992) (Kennedy, J., concurring) ("The First Amendment is a limitation on government[.]").

Many will already have done so, recognizing the erosion of *Lemon* and the import of intervening precedents like *Town of Greece* and *Kennedy*. And students will continue to make their choices about how to regard and whether to join in the religious observances of their fellow students, a healthy part of learning to be a citizen of a pluralistic democratic society.

For similar reasons, it is hard to imagine "prospective economic, regulatory, or social disruption[s]" from overruling *Santa Fe*. *See Ramos*, 590 U.S. at 107. "No one, it seems, has signed a contract, entered a marriage, purchased a home, or opened a business based on the expectation that" the bad precedent remains in force. *Id.* Finally, not to be ignored is that executive officials who must apply the Constitution in their public administration also rely on the binding interpretations of this Court to be coherent and clear. Reducing doctrinal confusion will advance, not impede, the government's and the public's interest in consistent and predictable enforcement of law.

II. *SANTA FE* AND OTHER ERRONEOUS ESTABLISHMENT CLAUSE CASES HAVE DISTORTED GOVERNMENT-SPEECH DOCTRINE.

Santa Fe's erroneous Establishment Clause holding is alone sufficient to warrant overruling. But as the Eleventh Circuit's analysis makes plain, *Santa Fe*'s analysis bleeds into government-speech analysis, exacerbating the need for this Court's intervention. *See Dobbs*, 597 U.S. at 286 (overturning precedent is proper when case leads "to the distortion of many important but unrelated legal doctrines").

The Eleventh Circuit relied on *Santa Fe* for determining the threshold issue of what was the relevant "context" for examining the speech in question. *Cambridge Christian,* 115 F.4th at 1288–89. It specifically relied on *Santa Fe*'s conclusion that *only* the narrow category of pregame speech before football championships—and not other relevant contexts such as halftime or other public school-administered events—was proper. *See id.* And having deemed irrelevant much of Cambridge Christian's evidence of private parties speaking over the public speakers in analogous contexts, the court ultimately concluded the speech at issue was the government's. *See id.* at 1296.

That misunderstood the nature of government speech. Of course, the government must be able to "speak[] for itself . . . in order to function." *Shurtleff v. City of Boston*, 596 U.S. 243, 247–48 (2022). But it is a "dangerous misuse" of the government-speech doctrine to use it as a post-hoc justification for excluding all religious expression from public life. *Matal v. Tam*, 582 U.S. 218, 235 (2017). Take *Shurtleff v. City of Boston*, a case that arose when Boston City Hall prohibited a religious group from flying its flag on city property. 596 U.S. at 248. While the City normally opened its property to all sorts of private organizations to fly their flags, it excluded the religious group "only because of a government official's mistaken understanding of the Establishment Clause." *Id.* at 261 (Kavanaugh, J., concurring). Yet the City ultimately tried to defend its action on a government-speech theory. *Id.* at 248. *Shurtleff* is not the only government-speech case to be "litigated in the shadow of the First Amendment's Establishment Clause." *Pleasant Grove City v.*

Summum, 555 U.S. 460, 482 (2009) (Scalia, J., concurring) (emphasis omitted) (noting a similar dynamic).

In short, misunderstandings of government-speech doctrine, as were evident in *Shurtleff* and are again evident here, further justify this Court's intervention.

CONCLUSION

The Court should grant the writ of certiorari.

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