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* CHRISTIAN FOOTBALL COACHES & PLAYERS IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*[1]

Coach Tommy Bowden

In the Bowden household, football and faith were two sides of the same coin. As part of a legendary coaching dynasty, Tommy Bowden grew up watching his father weave Christian principles into football, a legacy he's carried into his own career. Coach Bowden insists that barring coaches from expressing their beliefs in public schools stifles the very guidance young athletes need. In supporting the petitioner, Coach Bowden lends his voice to protect religious expression in public school athletics, a stance rooted in his lifelong commitment to faith-driven mentorship.

Tim Tebow

Tim Tebow, a Jacksonville native and former University of Florida quarterback, is known as much for his leadership and character as for his athletic achievements. A member of the College Football Hall of Fame, he won the Heisman Trophy in 2007 and led his team to two BCS National Championships, becoming one of the most recognizable college athletes of his era. His football career was followed by a stint in the NFL and later in Minor League Baseball. For Tebow, prayer offers a moment to shift the spotlight—redirecting attention on God when everything else is focused on the athlete. Tebow now serves as the founder and chairman of the Tim Tebow Foundation,

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record for all parties have received the timely notice required under Rule 37.2.

which brings Faith, Hope and Love to those needing a brighter day in their darkest hour of need.

In supporting the petitioner, Tebow affirms the importance of protecting the right of coaches and players to express sincerely held beliefs in respectful and appropriate ways. His example reflects how faith, when lived with authenticity and conviction, can inspire communities and strengthen the culture of sports at every level.

Chad Hennings

For Chad Hennings, faith wasn't just a personal anchor—it was a lifeline through chaos. A three-time Super Bowl champion with the Dallas Cowboys and a decorated Air Force pilot who flew 45 missions in the Persian Gulf, he leaned on his Christian beliefs amid roaring jets and roaring crowds alike. He believes that this freedom to live out his faith fueled his resilience, a lesson he wants preserved for student-athletes. Hennings stands with the petitioner to ensure coaches and players in public schools can draw on that same strength sourced from faith alone and champions the right to religious expression in athletics.

Dat Nguyen

Dat Nguyen's story begins far from the gridiron, in a refugee camp where faith planted seeds of hope. The first Vietnamese-American NFL player, he carried that hope through Texas A&M—where he shattered records and earned All-American honors—to a seven-year career with the Dallas Cowboys. On the field, he saw faith rally teammates, turning individuals into a unit. Nguyen contends that public school athletics should nurture this unity, not restrict it.

Cory Procter

A "faith-driven man," forged across 54 NFL games, Cory Procter, was an offensive guard for the Dallas Cowboys and Miami Dolphins. Procter found that shared beliefs turned grueling practices into moments of connection during his college days at the University of Montana and beyond. Now a vocal advocate, Procter sees religious expression as a cornerstone of athletic culture—one public schools must protect. He aligns with this brief to uphold that right for coaches and student-athletes alike. In supporting the petitioner, Procter reinforces the need for religious freedom in sports, echoing his deep-seated views on its role in team unity.

Alan Cox

A retired coach, Florida high school principal, and deputy school superintendent, Alan Cox is the son of legendary Florida high school football coach Gene Cox. During his lifetime, Gene Cox was inducted into six halls of fame, including the Florida Sports Hall of Fame and the Florida High School Athletic Association Hall of Fame. Alan Cox played and coached football under his father, Gene, and reports that for his father pre- and post-game prayer was integral to the Florida football programs he led and one of the many ways that Coach Cox lived out his faith. The other coaches, players, parents and observers understood that this practice was an outgrowth and reflection of his father's personal faith, and not that of the schools where he coached. Alan also reports that this was historically a common practice at Florida interscholastic football games played among Florida High School Athletic Association members.

SUMMARY OF THE ARGUMENT

Tasked with resolving whether it was constitutional for FHSAA to deny Cambridge Christian School the use of a loudspeaker for public, pre-game prayer at their championship football game, the Eleventh Circuit had one question to decide: whether Cambridge Christian's use of the loudspeaker was properly categorized as Cambridge Christian's own private speech—fully protected by the First Amendment—or FHSAA's government speech, to which Cambridge Christian has no First Amendment claim. Under this Court's precedents, that required the Eleventh Circuit to conduct a holistic, non-mechanical review of the message that considered, among other things, the history surrounding the message being conveyed.

That historical inquiry required the Eleventh Circuit to review the *general* history surrounding the nature of the message (*i.e.*, the tradition of public displays of faith in American football) and a *specific* review of the history as to the circumstances immediately before the court (*i.e.*, FHSAA's practice of sometimes allowing prayer at its games, including championship games). Unfortunately, it failed to do either. That methodological error produced a decision divorced from the general historical context, stilted by an overly narrow view of the specific history, and destined to conclude (wrongly) that government speech was at issue.

* * *

This Court should grant Cambridge Christian's petition for *two* reasons. *First*, omitting the general review of history here doesn't just present harmless

deviation from this Court's guidance. It's prejudicial. The opinion below proceeded unaided by vital context: that faith in general and outward, public expressions of faith in particular have *always* been a part of American football. From the start, football's legendary founders infused Christian virtue into the game. And far from withering, those values and the resulting prayer-tradition remain central today. For the young men at Cambridge Christian denied their long-standing tradition of pre-game prayer, the FHSAA's decision can only be viewed as religious intolerance and the stifling of their private speech. The court missed that their public display of faith was the inevitable fruit of a long tradition of the cause in which those young athletes were engaged: American football.

Second, the Eleventh Circuit's decision authorizes arbitrary viewpoint discrimination by government actors hostile (or not) to the speaker or the speech. Thrown into in the government-speech bucket, virtually identical expression is destined to be forbidden one day, when the government official in charge dislikes the messenger or their message, and permitted the next, when a different government official has different predispositions. The Eleventh Circuit licensed this Kafkaesque outcome by overlooking the *specific* history of public prayer at FHSAA games. At the very same championship game just three years before, FHSAA allowed *another* Christian school to pray over the loudspeaker. And at each playoff game until *this* championship game, Cambridge Christian prayed publicly. The court gave these facts too little attention.

The result is a court-sanctioned system of viewpoint discrimination, in which free expression is

conditioned on the whims of officials on the ground. The First Amendment, fortunately, forbids this outcome.

ARGUMENT

I. The Eleventh Circuit's decision omitted the general history of prayer in football, undermining the holistic review necessary for the determination of private or government speech.

"When the government encourages diverse expression—say, by creating a forum for debate—the First Amendment prevents it from discriminating against speakers based on their viewpoint. But when the government speaks for itself, the First Amendment does not demand airtime for all views." *Shurtleff* v. *City of Boston, Massachusetts*, 596 U.S. 243, 247–48 (2022) (cleaned up). Put differently, where the government invites the public to use its resources for expression, the First Amendment will protect that speech as *private speech* of the citizen actor. But where the government is using its resources to broadcast *its own messages*, the First Amendment serves as no impediment to the government's regulation over that message.

So, here, the question becomes: Is Cambridge Christian's prayer over the loudspeaker at the FHSAA championship game Cambridge Christian's *private speech* or FHSAA's *government speech*? The history of faith and prayer in American football compelled a single response: Cambridge Christian's prayer—as private speech—was its own, and not the government's to regulate.

Acknowledging that the "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, this Court endorsed "a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression," *ibid.* The Court further cautioned that (unlike the Eleventh Circuit's work below) "[its] review is not mechanical; it is driven by a case's context rather than the rote application of rigid factors." *Ibid.* Relevant evidence for this holistic review "includ[es]," non-exhaustively, "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." *Ibid.* (citing *Walker* v. *Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 209 (2015)).

It is what a proper review of the history reveals that is the focus of *amici*'s brief today.

a. Faith and prayer have travelled with American football since its inception.

In *Shurtleff*, this Court resolved whether Boston's practice of offering a flagpole outside of its City Hall was properly understood as a forum for private speech or the conveyance of government speech alone. The Court began with the relevant, general history coloring the context in which the expression at issue must be considered. There, it was "the history of flag flying, particularly at the seat of government." *Shurtleff*, 596 U.S. at 253. Here, it should have been the history of public displays of faith, including prayer, in football. And those displays are as old as football itself.

We begin at the infancy of football. "[T]he tackling dummy, numbered jerseys, huddles, athletic letters, and men in motion" were all *invented* by Yale Divinity student—and revered football pioneering *titan*—Amos Alonzo Stagg. Collin Hansen, *Football's Pious Pioneer*, CHRISTIANITY TODAY (Aug. 8, 2008), bit.ly/44cslKW.

For Stagg, it was not just that faith and football were inseparable, his pioneering of the game in the late 19th century was the *fruit* and *function* of his faith. To Stagg, "coaching was a 'Christian calling,' and through it he taught the values of temperance, self-control, fair play, and the Golden Rule—lessons traditionally identified with conventional religion." Erin A. McCarthy, *Making Men: The Life and Career of Amos Alonzo Stagg, 1862–1933* (May 1994) (Ph.D dissertation, Loyola University Chicago), bit.ly/3IulQug at 13. "As a student at Yale in the 1880's, Stagg discovered a strong connection between his athletic gifts and his devotion to God. . . . *Coaching, to Stagg, was simply an extension of his work to convert others to a better life*." *Ibid.* (emphasis added).

But it wasn't just the modern form of the game that Stagg gave to all: "Stagg instilled in football Christian values that remain apparent today." Hansen, *Football's Pious Pioneer* at 1. Far from withering away, the seeds planted by that "soft-spoken," *ibid.*, divinity student have *transformed* American life. Through the years, the great American stage that is football has come to rest on the branches grown from those seeds of faith—now more than ever before.

Take what the fans say. In February 2025, *Sports Spectrum* reported that 56% of "regular sports viewers support[ed] players using their platform to promote

their [faith and spirituality]." Commenting on the survey, *Christianity Today* reported that "[r]ather than replacing organized religion in American life, perhaps sports has become a cultural space that is *more* open to religion—a means through which traditional identities can be affirmed and expressed. And perhaps this is true not just of athletes and coaches [ ], but also of the fans who cheer them on." Paul Putz, *Super Bowl Fans Don't Want Faith Sidelined*, CHRISTIANITY TODAY (Feb. 7, 2025), bit.ly/46sqSBA (emphasis in original).

The owners of American football organizations come out the same way. Just weeks before the Kansas City Chiefs would make their first Super Bowl appearance in over fifty years, CEO Clark Hunt proudly proclaimed "'[i]n the National Football League, Christ is really glorified. My identity is my faith in Christ.'" Zak Wellerman, *Kansas City Chiefs CEO speaks of his faith, Patrick Mahomes at CityFest luncheon*, TYLER MORNING TELEGRAPH (Oct. 3, 2019), bit.ly/4leJSbj.

The Chiefs won that year.

On Easter Sunday of that same year (2020), the Pro Football Hall of Fame broadcasted ten homilies by NFL superstars publicly sharing their faith *and* republished Pastor Rich McDaniel's 2013 Huffington Post Blog on the parallels between football and the Bible. *See* Pro Football Hall of Fame, *Faith & Football* (Apr. 13, 2020) bit.ly/44xBI6G.

Of prayer, "[a]nyone who watches football is bound to come across players, coaches or fans putting their faith on display." Jorge Gomez, *Faith on the Field: The Story Behind NFL Prayer Circles* (Sept. 1, 2023), bit.ly/44uKiDk. But it's not just the athlete's taking a knee or pointing upwards to Heaven, American

football has the "prayer circle." *See ibid.* (collecting high school, college, and NFL photos of pre- and post-game prayer circles). In the NFL, "prayer circles have been around for at least 33 seasons." *Ibid.* And they trace their origin to a 1990 matchup between the San Francisco 49ers and the New York Giants. *See generally* Thomas Neumann, *How 49ers, Giants started postgame prayer tradition 25 years ago* (Dec. 3, 2015), bit.ly/3Gl7wnt. The game was a contentious matchup built up over prior collisions and disrespectful remarks between the two teams. And it "nearly bubbled over into a full-scale brawl mid-field." *Ibid.* Ironically, each teams' chaplain had scheduled the prayer ahead of the matchup precisely to demonstrate the reconciliation power of faith between two teams. Though the acrimony increased, the teams still wanted to pray. *See ibid.* ("'We made the decision, no matter who wins or loses, at the end of the game we'll meet and just take a knee at the 50-yard line and pray together. The purpose is to honor God and give thanks for the opportunity to play the game.'" (quoting 49ers chaplain Pat Richie)).

The practice, however, was not without resistance. "Just as the act of postgame prayer was picking up steam, it became caught in the crossfire of a larger debate." *Ibid.* The NFL cited violations of their policy against "fraternization between teams," to try and curtail the practice.

But it didn't work. The players wanted prayer. And they continued to do so even on pain of threatened fines, although no fines came. The practice continued and, "before long, following the leads of the 49ers, Giants and Bills, players from across the league took up the practice of praying in unison after games. The custom mushroomed over the years to the point where

it now is an established routine in the NFL, college football and other sports." *Ibid; see also* Sports Spectrum, *Philadelphia Eagles players come together to pray after winning the Super Bowl*, YouTube (Feb. 5, 2018), bit.ly/4kpXa3s.

The University of Nebraska[2] football team famously has the "Husker Prayer." It calls to mind the Christian virtues Stagg instilled in the game nearly 140 years ago:

> Dear Lord, the battles we go through life,
> We ask for a chance that's fair
> A chance to equal our stride,
> A chance to do or dare
> If we should win, let it be by the code,
> Faith and Honor held high
> If we should lose, we'll stand by the road,
> And cheer as the winners go by
> Day by Day, we get better and better!
> Til' we can't be beat . . .
> Won't be beat!

Nebraska Huskers, *Chasing 3: In Season with Nebraska Football | Episode 1 – UTEP* (Sept. 4, 2024), bit.ly/3IfpZ5l.

To review Cambridge Christian's request for prayer apart from this rich history is to have killed the analysis before it started. It was to treat as separate two things that have often travelled together. It ignores what the coaches, players, and fans expect about a message and who its conveyors are. This ahistorical review also insists on a view of religion

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[2] The University of Nebraska is Nebraska's only public university system.

that *has never* been true: that we are an *areligious* Country. That "[r]eligion is to be strictly excluded from the public forum . . . is not, and never was, the model adopted by America." *McCreary Cnty., Ky.* v. *Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 886 (2005) (Scalia, J., dissenting); *see also ibid.* (collecting public displays of faith in government: "George Washington added to the form Presidential oath prescribed [in the Constitution] the concluding words 'so help me God'"; "[t]he Supreme Court under John Marshall opened its sessions with the prayer, 'God save the United States and this Honorable Court'"; "[t]he First Congress instituted the practice of beginning its legislative sessions with a prayer"; "[t]he same week that Congress submitted the Establishment Clause as part of the Bill of Rights for ratification by the States, it enacted legislation providing for paid chaplains in the House and Senate").

b. Faith compels *action*, whether on the sidewalk or on the field; the First Amendment protects that action.

All these faith accounts build up to one point: To hold these beliefs is to *live them out*, even while playing football. These beliefs occupy every part of a man or woman's primary concern because they must. The harm in omitting this history is best appreciated upon the realization that "[t]he [Free Exercise][3]

[3] This case implicates *both* Free Exercise and Establishment Clause concerns. *See Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (calling out the error in the Ninth Circuit's reasoning that Establishment Clause concerns "'trump[ed]' Mr. Kennedy's rights to religious exercise and free speech" because while "it is true that this Court and others often refer to the 'Establishment Clause,' the 'Free Exercise Clause,' and the 'Free

Clause protects not only the right to harbor religious beliefs inwardly and secretly. *It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'"* *Kennedy*, 597 U.S. at 524 (quoting *Employment Div., Dept. of Hum. Res. of Ore* v. *Smith*, 494 U.S. 872, 877 (1990) (emphasis added)).

For the young men of Cambridge Christian facing their challengers on the eve of their fierce but cherished contest, prayer for safety, grace, and God's provision (just as all the other times before) was far from simple prudence. It was the natural fruit of their faith and the natural tradition of the cause in which they were now engaged: American football. And it was inescapable.

The *amici* offer *three* compelling testimonies demonstrating the insuppressible call to action faith allows, even in football.

Testimony of Coach Tommy Bowden

Coach Tommy Bowden spent his life in American football, leading programs at Clemson, Tulane, Auburn, and other institutions. But his most important role was as a mentor, a counselor and, for many young men, a spiritual father. And he could not have fulfilled that role without his Christian faith.

Speech Clause' as separate units," the "three Clauses appear in the same sentence of the same Amendment .... A natural reading of that sentence would seem to suggest the Clauses have 'complementary' purposes, not warring ones where one Clause is always sure to prevail over the others." (quoting *Everson* v. *Board of Ed. of Ewing*, 330 U.S. 1, 13, 15 (1947)).

Bowden grew up in the South, where football and faith were woven into the fabric of community life. At high school games, it was common—expected, even—for a prayer to be offered before kickoff. Not to proselytize, but to ask for safety, sportsmanship, and gratitude. It was part of the rhythm of the game, like the national anthem or the coin toss.

As a head coach, Bowden brought that tradition with him. He encouraged his players to attend church. He invited them to join the Fellowship of Christian Athletes. He organized "Spiritual Two-a-Days," where each player was paired with a local Christian mentor. These were voluntary programs—but 83 out of 85 scholarship players joined. They were hungry for guidance, for meaning, for something deeper than wins and losses.

Bowden modeled prayer for this teams. He prayed for both teams—for health, for character, for the chance to play with honor (before and after every game). He brought in speakers like Reggie White (*i.e.*, ordained minister and defensive hall of famer better known as the "Minister of Defense") to talk about faith and leadership. He wrote to every parent before the season, explaining that he was a Christian coach and that he would encourage—not require—their sons to explore faith.

To tell a Christian team that they cannot pray before a championship game is, in Bowden's view, to deny them an ability to exercise their faith by proclaiming glory to God instead of their own achievements. It is to deny the reality that for many, faith is not a private hobby—it is the source of values, leadership, and love for the people they serve.

Bowden believes that Cambridge Christian should not have to choose between competing for a championship and living out its faith. And he's right.

The Constitution does not require that choice. It protects the right of every American to speak and live according to conscience. That's a freedom Coach Bowden enjoyed through his career. And it's a freedom he hopes this Court will support for the next generation.

Testimony of Chad Hennings

Chad Hennings has worn many uniforms in his life—those of a college athlete, an Air Force pilot, a professional football player, and now a business partner, author, and speaker. But the identity that has grounded him through all of them is his Christian faith.

From his earliest days playing football in Iowa, prayer was a natural part of the game. Coaches prayed with their teams before taking the field—not to win, but for protection, for character, and for the strength to honor the game and each other. That tradition continued at the Air Force Academy, where Hennings learned that leadership without moral grounding is fragile. It followed him into the NFL, where he played for the Dallas Cowboys and won three Super Bowls. In every locker room, prayer was a source of unity and purpose.

But for Hennings, faith is not to be confined to private moments.

He has opened government sessions in Texas with prayer. He has spoken at the Pentagon, the Merchant Marine Academy, and the Air Force Academy about

leadership, identity, and the moral compass that faith provides. These public displays are not to impose his beliefs, but *to live them out authentically* as the natural consequence of the Christian faith.

To separate faith from football, in Hennings's view, is to misunderstand both. As he puts it, football is a crucible for character. It demands sacrifice, discipline, and courage. And for many, those virtues are inseparable from the pursuit of Christ.

When a coach or player takes a knee in prayer publicly—whether in victory, defeat, or concern for an injured teammate—it is not a political act, but a sincere and *individual* expression of faith that is extremely personal to the adherent. Some view it as a necessary expression given their convictions—forged in the atmosphere historically associated with American football.

Hennings believes that requiring a football team to hide their faith under the pretense of Constitutional concerns turns the First Amendment on its head. The freedom to speak, to pray, and to live according to one's conscience is not a threat to pluralism—it is its foundation. He supports Cambridge Christian because he knows that faith, when expressed with humility and sincerity, enriches communities, institutions, and young people.

Testimony of Tim Tebow

Though Tim Tebow is no longer playing football professionally, he tries to keep his faith central to everything he does. His years on the field were never just about the game—they were opportunities to live out and share his beliefs in ways that made a lasting impact.

Tebow's Christian faith doesn't simply influence his life; it defines it. He has consistently and respectfully expressed his beliefs through actions like prayer on the field and inscribing Bible verses such as "John 3:16" on his eye black during major games. He has leveraged the platforms afforded to him to serve others, pursue a life of eternal impact, and inspire those around him to do likewise.

Tim strives to approach every platform he's given—not just in sports—with a sense of purpose rooted in his beliefs. Whether speaking, mentoring, or serving the world's Most Vulnerable People ("MVPs"), he carries the same values of perseverance, humility, and faith in something greater than himself that guided him as an athlete.

Tebow strives to redirect any praise or recognition to the One he believes truly deserves it. His public expressions of faith are not about grandstanding but about living authentically and encouraging others to pursue lasting significance rather than temporary success.

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In omitting all this history and context, the Eleventh Circuit prejudiced Cambridge Christian by framing its request for prayer as a kind of unprecedented request unmoored from the natural function of its students' faith and tradition. That the rest of the analysis would suffer was unavoidable.

II. Should the Eleventh Circuit's decision stand, government actors will be licensed to discriminate against religious expression under the pretense of government speech.

In *Santa Fe,* the Court emphasized that "[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch* v. *Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring). The error is to think that the government has any say in how this breaks.

Resolution of whether the adherents or nonadherents become "insiders" or "outsiders" is neither possible nor desired at the hands of the government. This is why careful analysis is necessary when resolving whether the government speaks as government and when it only opened the door for a private citizen's message. The solution therefore comes not from an exercise in picking who gets to be an "insider" today and an "outsider" tomorrow based on content but from what the First Amendment requires: "[M]utual respect and tolerance, not censorship and suppression, for religious and nonreligious views alike." *Kennedy*, 597 U.S. at 514.[4]

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[4] In a pluralistic society, that sometimes means that a dissenter will inevitably hear a message they disagree with. But that alone does not constitute Establishment Clause injury. *See City of Ocala, Florida* v. *Rojas*, 143 S. Ct. 764 (2023) (Gorsuch, J., respecting the denial of certiorari) ("This Court has never

But to do this work well, it must be *insisted* that the government act consistently and predictably. Done correctly, it becomes evident that the content itself won't matter at all.[5] Recall, if the government speaks as government, the First Amendment does no work. But if the message is that of the private citizen, the First Amendment is at its zenith and the content—whatever it may be—is almost certainly protected.

Should the government act *inconsistently*, however, it would immediately betray itself as having feigned neutrality as pretense for viewpoint discrimination. *See Shurtleff*, 596 U.S. at 263 (Alito, J., concurring) ("To prevent the government-speech doctrine from being used as a cover for censorship, courts must focus on the identity of the speaker."). And FHSAA has betrayed itself.

As the petitioners demonstrate, the specific history of prayer at FHSAA is compelling. Not only did FHSAA allow prayer at a championship game just three years earlier (at the request of the same team who is once again at the championship, University Christian, now adverse to Cambridge Christian), it allowed prayer at every playoff game leading up to the championship game at issue. Let alone all the other instances of obvious private speech conveyed over the loudspeaker at various games (*e.g.*, commercial advertising and the like).

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endorsed the notion that an 'offended observer' may bring an Establishment Clause claim." (citing *American Legion* v. *American Humanist Assn.*, 588 U.S. 29 (2019)).

[5] Which is helpful because "[t]he Court's foray into religious meaning either gives insufficient weight to the views of nonadherents and adherents alike, or it provides no principled way to choose between those views." *Van Orden* v. *Perry*, 545 U.S. 677, 697 (2005) (Thomas, J., concurring).

This is the *opposite* of the consistency necessary to ensure government actors are not raising "concerns about phantom constitutional violations [to] justify actual violations of an individual's First Amendment rights." *Kennedy*, 597 U.S. at 543.

The Eleventh Circuit gave this too cursory of a review. To start, it treated the most direct comparative history here (*i.e.*, the prayer at the prior championship game three years before) with just two lines. "There is only one example in the record of any private speaker using the PA system for a pregame message (religious or secular) at an FHSAA football state championship[.] One instance, does not a history make." *Cambridge Christian Sch., Inc.* v. *Florida High Sch. Athletic Ass'n, Inc.*, 115 F.4th 1266, 1289 (11th Cir. 2024).

And it wholly discounted Cambridge Christian's public prayers at each of the playoff games leading up to the championship because the playoff games "[were] hosted by one of the participating schools while championship games are hosted at a neutral site by the Central Florida Sports Commission in partnership with the FHSAA." *Id.* at 1290. Here the court took far too narrow of a review. Finding operative the fact that for the playoff games, Cambridge Christian "chose the venue and the PA announcer for those games," whereas for the championship "FHSAA chose the venue, and the Central Florida Sports Commission chose the PA announcer," *ibid.*, the Eleventh Circuit ignored that the venue for all games was chosen in strict accordance with FHSAA rules. *See* Florida High School Athletic Association, *Frequently Asked Questions*, bit.ly/3GukmQe (last visited July 6, 2025). It also found operative that while "FHSAA prepares

the PA scripts for all playoff football games" and championship games, "the pregame prayers at the non-championship football games were unscripted, and it's undisputed that [Cambridge Christian] did not ask permission from the FHSAA to pray over the PA system at those games." *Ibid.* "In fact," the court continued, "there's no evidence that the FHSAA actively monitored those early round playoff games or even knew that prayer was taking place at them," *ibid.*, even though all games involved FHSAA members, under the FHSAA rules. *Two* obvious problems.

One, the Eleventh Circuit attempts to distinguish playoff and championship games on the basis that the FHSAA hosted the championship games but not the playoff games. But it never explains *why* that matters *holistically*. Does the fan in the stand have any appreciation at all for this fact? When FHSAA hosts a game, do they use public or private stadiums; again, does that matter to the third-party observer? Does that matter to the teams? The opinion below addresses none of this.

Two, as to the level of control FHSAA had over playoff-game PA scripts, the Eleventh Circuit again doesn't explain the import. Does the fact that FHSAA actually *did* have a policy of controlling the scripts but *ignored* it by allowing unscripted content weigh in favor of government speech or against it? Shouldn't the fact that the FHSAA didn't monitor playoff games closely—allowing free use of the forum for private speech in every game leading up to the championship—divest it of the right to insist on total control of the championship game to ban what was a *historical practice* of allowing prayer as private speech as part of FHSAA games? Again, all unanswered.

FHSAA is not acting consistently. To afford it the power to ebb and flow between the categories of speech by declaring that it will treat one game differently—without regard to general history and the specific history of both regular and postseason games—is a dangerous proposition. It means that the government has unbridled discretion to decide that historically indistinguishable circumstances count as private speech one day and government speech the next—giving the government the ability to *dispense* or *withhold* First Amendment protections as it sees fit. This is far from the parity the Establishment Clause requires. *See Shurtleff*, 596 U.S. at 261 (Kavanaugh, J., concurring) ("[A] government does not violate the Establishment Clause merely because it treats religious persons, organizations, and speech equally with secular persons, organizations, and speech in public programs, benefits, facilities, and the like. On the contrary, a government *violates* the Constitution when (as here) it *excludes* religious persons, organizations, or speech because of religion from public programs, benefits, facilities, and the like." (emphasis in original)).

To the fans, the coaches, the teams, and the public, FHSAA allowed prayer. It did so as part of the playoff games. And it did so in a championship game, just three years earlier. But now it bans it. Though the Eleventh Circuit says the prior championship game doesn't count as history, it never explains how FHSAA can reconcile the difference.

But it seems the only way FHSAA can reconcile this practice is to posit that the same conduct it has historically allowed under identical circumstances was *private speech back then* (because it allowed it) but *is now government speech* (since it now prohibits

it). It cannot be that the mere passage of time is doing the differentiating work here. It must therefore be that FHSAA gets to choose whether it is permitting private speech one day or controlling a government message the next.

Should the Court deny the petition, it would be endorsing the dangerous proposition that state actors can ignore the history that should define the nature of a forum and decide for themselves when speech is deemed private and when it is deemed government speech—masking their viewpoint discrimination.

CONCLUSION

The Court should grant the petition because the speech below is private speech. Any other holding sanctions the FHSAA's call for a license to change between the categories of speech as convenient. Historical practice and tradition, fortunately, belie this position.

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