No. 18-12

In the Supreme Court of the United States

JOSEPH A. KENNEDY,
Petitioner,

v.

BREMERTON SCHOOL DISTRICT,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE TEXAS HIGH SCHOOL COACHES ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether public school teachers and coaches retain any First Amendment rights when at work and "in the general presence of" students.

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INTEREST OF *AMICUS CURIAE*[1]

The Texas High School Coaches Association ("the Association") serves as the primary advocate and leadership organization for Texas high school coaches.[2] First organized in 1930 with only 28 members, the Association's membership has grown to over 21,500, making it the largest organization of its kind in the world.[3] The Association's objectives include maintaining the highest possible standards in athletics and the coaching profession, having a representative group of coaches to whom athletic problems of general interest may be referred, and promoting good fellowship and social contact among coaches.[4]

The Association's interest in this case is twofold. First, like other public employees, the Association's members are ill-served by the lingering confusion in the law at the intersection of government-employee speech and religious-exercise rights. The petition presents an appropriate vehicle for the Court to provide much needed clarity to ensure that even well-

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1. Pursuant to the Court's Rule 37, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no person or entity other than counsel for *amicus curiae* made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties were timely notified of the filing of this brief more than 10 days prior to the filing of this brief. The parties have provided written consent to the filing of this brief.

2. www.thsca.com/about_us.

3. *Id.*

4. *Id.*

meaning governmental entities are not infringing upon the fundamental speech and free-exercise rights of their employees in overly cautious attempts to avoid purported violations of the Establishment Clause.

Second, and relatedly, as an Association representing more than 21,500 members, the Association's membership encompasses countless religious backgrounds and faiths, including members of no faith. The Association has an interest in the preservation of the constitutional rights of all of its members to express their personal views generally—and personal religious views in particular—as each member sees fit. The Ninth Circuit's decision jeopardizes this interest by subjecting the speech rights of public educators to a standard that finds no support in the First Amendment's text or the Court's jurisprudence. And in the process, it eviscerates the right of public school teachers to engage even in a brief, silent, personal prayer whenever on school grounds in the view of students.

SUMMARY OF ARGUMENT

The Court has long observed that teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). And while school districts, like all government employers, are entitled to a "significant degree of control over their employees' words and actions" to ensure that the government's own message is accurately conveyed, when a teacher speaks solely as a private citizen, his speech is his own—fully

protected by the First Amendment. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

The Ninth Circuit's decision allows the Bremerton School District to prohibit silent, private prayer on the ground that it threatens an Establishment Clause violation simply because Kennedy, if allowed, would pray immediately after a school event in view of the public. But the District may prohibit Kennedy's prayers only if they constitute government speech. Contrary to the Ninth Circuit's conclusion, the Court's precedent directs that Kennedy's personal prayer does not become the District's speech merely due to its timing and public location. Because neither the content nor the occurrence of Kennedy's prayer was dictated, controlled, or even endorsed by the District, it did not qualify as government speech. Kennedy's private prayer belongs to him, and it is entitled to First Amendment protection.

ARGUMENT

I. THE NINTH CIRCUIT ERRED IN HOLDING THAT KENNEDY'S SILENT, PRIVATE PRAYER WAS THE SCHOOL DISTRICT'S GOVERNMENT SPEECH.

The Court has cautioned that Establishment Clause jurisprudence is "delicate and fact-sensitive." *Lee v. Weisman*, 505 U.S. 577, 597 (1992). Accordingly, "[e]very government practice must be judged in its unique circumstances." *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984) (O'Connor, J., concurring).

In the public school setting, "there will be instances when religious values, religious practices, and religious persons will have some interaction with the public schools and their students." *Lee*, 505 U.S. at 598-99. The Court's Establishment Clause jurisprudence calls for the difficult task of separating private messages of students and faculty from state-sponsored religious messages, protecting the former and prohibiting the latter. *Adler v. Duval Cty. Sch. Bd.*, 250 F.3d 1330, 1336 (11th Cir. 2001). This determination is "one of line-drawing," *Lee*, 505 U.S. at 598, "sometimes quite fine, based on the particular facts of each case," *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 847 (1995) (O'Connor, J., concurring).

Eschewing these principles, the Ninth Circuit's decision establishes an expansive definition of government speech under which the District had license to suppress any "demonstrative communication" by a teacher or coach that occurs "at school or a school function" and "in the general presence of students." Pet. App. 21, 23. Applying this sweeping standard, the Ninth Circuit determined that Kennedy's silent, private prayer was the District's speech because it occurred at a school function, in the general presence of students, and ostensibly in a capacity "one might reasonably view as official." Pet. App. 21.

Noticeably absent from the Ninth Circuit's test is any consideration of control—the primary element of what may constitute "government speech" in the

Establishment Clause context. *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 562 (2005).

Here, because the District neither dictated nor encouraged Kennedy's prayer—indeed, the District actively attempted to stop him from praying once it learned he was doing so—the speech belonged to Kennedy, not the District. The fact that the prayer occurred following a school-sponsored football game in the presence of students and the public does not alter the central, dispositive fact that the prayer was genuinely personal speech protected by the First Amendment. The Court should reject the Ninth Circuit's sweeping test because it is contrary to the Court's government-speech doctrine.

A. Government Speech Is Defined by Government Control over the Message.

1. The government-speech doctrine is justified at its core by the idea that, in order to function, a government must have the ability to express certain points of view, and it thus must be afforded control over its own message. *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 598 (1998) (Scalia, J., concurring in judgment) ("It is the very business of government to favor and disfavor points of view . . ."). When the government is the speaker, the doctrine gives an absolute defense to an individual's free-speech claim.

Thus, for example, the government does not offend the First Amendment by assessing a tax on beef producers and using the proceeds to fund beef-related

promotional campaigns. *Johanns*, 544 U.S. at 564-65. Nor does the government's content-based refusal to accept a monument for display in a public park infringe the would-be monument donor's free-exercise rights. *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009). A government entity has the right to "speak for itself." *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000). "[I]t is entitled to say what it wishes," *Rosenberger*, 515 U.S. at 833, and to select the views that it wants to express, *Rust v. Sullivan*, 500 U.S. 173, 194 (1991). *See also Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239, 2246 (2015) (explaining that "when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position").

The defining characteristic of government speech is the government's actual control of the message. "When . . . the government sets the overall message to be communicated and approves every word that is disseminated," it engages in "government speech." *Johanns*, 544 U.S. at 562. Thus, in *Pleasant Grove City v. Summum*, the Court held that a local government's selection of certain permanent monuments for placement on public land constituted government speech, noting that "[a]cross the country, municipalities generally exercise editorial control over donated monuments through prior submission requirements, design input, requested modifications, written criteria, and legislative approvals of specific content proposals." 555 U.S. at 472 (internal quotation marks and citation omitted).

And in *Walker*, the Court recognized a state's authority to engage in government speech through its specialty license plate designs. *Walker*, 135 S.Ct. at 2255. Again, looking to the level of control exercised by the state in approving and designing the plates, as well as the history and nature of license plates generally, the Court concluded that the designs accepted by the state for use on specialty license plates were "meant to convey and [had] the effect of conveying a government message." *Id.* at 2250.

2. In contrast, when the government merely allows speech to occur on its property without exerting control over the message, the government does not engage in "government speech." Even a prayer "authorized by a government policy and tak[ing] place on government property at government-sponsored school-related events" is not necessarily government speech. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000); *see also Chandler v. Siegelman*, 230 F.3d 1313, 1316 (11th Cir. 2000) (*Chandler II*); *Chandler v. James*, 180 F.3d 1254, 1261 (11th Cir. 1999) (*Chandler I*).[5] The Court in *Santa Fe* explicitly reaffirmed the basic principle that "there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and

5. In *Chandler II*, the Eleventh Circuit reconsidered on remand its prior decision in *Chandler I*, which was vacated by the Court in light of *Santa Fe*, 530 U.S. 1256 (2000). The Eleventh Circuit reaffirmed its prior decision, holding that it was error for the district court to enjoin the state defendants from allowing private prayer at any school function. 230 F.3d at 1317.

private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." 530 U.S. at 302 (quoting *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990)).

Like the symbolic arm bands in *Tinker*, 393 U.S. at 503, or the censored newspaper articles in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), speech that is not government controlled remains individual speech, even though it takes place with the government's permission or on its premises. *Adler*, 250 F.3d at 1341 ("What turns private speech into state speech in this context is, above all, the additional element of state control over the content of the message.") (citing *Santa Fe*, 530 U.S. at 301-02). As the Eleventh Circuit noted in *Chandler II*, it is not the public location that makes some speech attributable to the government. 230 F.3d at 1316. Instead, it is the entanglement with or endorsement by the government that turns an employee's words into government speech that can be controlled and silenced by the government. *Id.*

To determine whether Kennedy's speech should be characterized as government speech or his individual speech, the Ninth Circuit should have looked to the level of control exercised by the District over Kennedy's message. So long as the prayer was genuinely initiated only by Kennedy, and was not the product of any school policy that actively or surreptitiously encouraged it, "the speech [was] private and it [was] protected." *Id.* at 1317. As explained below, the Ninth Circuit's failure to

undertake this analysis led to an erroneous decision that will only lend further confusion to this area of the law.

B. Because Kennedy's Prayer Was Neither Controlled, Coerced, Nor Even Suggested by the District, His Prayer Was His Own Personal Speech, Not the District's.

The undisputed facts establish that Kennedy's private, personal prayer was his own speech, and not the District's. There is no allegation that the District required, encouraged, or even condoned Kennedy's prayer in any way. There was no policy establishing prayer at football games. Indeed, for many years the District was unaware of Kennedy's practice of kneeling to pray after games; an employee of another school district brought the practice to the District's attention. Pet. App. 4. Moreover, the District ordered Kennedy to cease his practice immediately, and it ultimately placed him on administrative leave for disobeying its directive. The circumstances could not be more clear: Kennedy's silent, private prayer was not the District's speech. It was his own.

To reach the erroneous, contrary result, the Ninth Circuit focused on the fact that Kennedy's prayer occurred at a school function, in the general presence of students, during a time when Kennedy was obligated to "model[] good behavior." Pet. App. 24. Purporting to apply the Court's decision in *Garcetti*, the Ninth Circuit concluded that because Kennedy's job entailed teaching and serving as a role model, as well as communicating with students and spectators,

he was speaking on behalf of the District—*i.e.*, engaged in government speech—and his speech was not constitutionally protected. Pet. App. 26.

1. The Ninth Circuit's decision is inconsistent with the Court's precedents. *Garcetti* held that "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti*, 547 U.S. at 421. But the Court expressly rejected "the suggestion that employers can restrict employees' rights by creating excessively broad job descriptions." *Id.* at 424. And the Court subsequently clarified in *Lane v. Franks* that the "critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." 134 S.Ct. 2369, 2379 (2014). Speech delivered within the scope of an employee's duties is government speech, subject to the government's control. But speech "outside the scope of [an employee's] ordinary job duties is speech as a citizen for First Amendment purposes." *Id.* at 2378. That is so even when the speech relates to the employee's public employment or concerns information learned during that employment. *Id.*

Disregarding *Garcetti*'s direct caution against construing employees' job descriptions too broadly, and without regard to whether the District actually controlled any part of Kennedy's speech, the Ninth Circuit adopted a rule that focuses only on the

circumstances surrounding the speech and whether the employee is acting in an official capacity. Pet. App. 21. Under this test, the Ninth Circuit determined that Kennedy engaged in unprotected government speech because he briefly knelt and silently prayed in public view at a time when his job duties required him to model good behavior to students. Pet. App. 23-25.

The mere fact that Kennedy engaged in silent prayer while potentially on duty at a school event, in the presence of students, does not make his prayer the District's speech. The brief prayer was not part of his official job duties; it was not directed to students or the viewing public. Nothing about Kennedy's obligation to coach football and to provide a positive role model for his players and spectators equates with a rule that anything he thinks or does on the field by himself for thirty seconds is attributable to the District. The Ninth Circuit's contrary rule relies on the sort of all-encompassing job description the Court expressly rejected in *Garcetti*. 547 U.S. at 424-25.

2. The Ninth Circuit's proposition that all speech at a school-sponsored event is necessarily the District's speech (and therefore must be censored of religious elements), creates an unreasonable and unconstitutional rule. For example, meetings of school clubs are authorized, scheduled, and hosted by schools, but a school does not speak through a Bible club any more than through a chess or math club. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112-14 (2001). Likewise, graduation is arguably the

most important event at any high school, but a school board member speaking as a member of the community voices, not the school's sentiments, but his own if he offers a religious message during the ceremony. *Doe ex rel. Doe v. Sch. Dist. of Norfolk*, 340 F.3d 605, 612-13 (8th Cir. 2003). A teacher may not be disciplined for having a personal copy of the Bible on his desk, *Freshwater v. Mt. Vernon City Sch. Dist. Bd. of Educ.*, 1 N.E.3d 335, 352-55 (Ohio 2013), or for wearing a cross necklace while on duty in the school's library, *Draper v. Logan Cty. Pub. Library*, 403 F.Supp.2d 608, 612-23 (W.D. Ky. 2005). But the Ninth Circuit's new rule would prohibit each of these practices. Put simply, the Ninth Circuit's blanket assertion that any and all religious messages delivered by a faculty member at a school-sponsored event are attributable to the government is unrealistic, and would unconstitutionally require censorship of personal, religious speech.

The Constitution does not prohibit a school employee from engaging in silent, personal prayer merely because the prayer occurs at school, or at a school function, in the presence of others. Permitting employees to engage in such silent observations of faith "signifies neither state approval nor disapproval of that speech . . . The permission signifies no more than that the [government employer] acknowledges its constitutional duty to tolerate religious expression. Only in this way is true neutrality achieved." *Chandler I*, 180 F.3d at 1261. The Ninth Circuit's contrary rule threatens a requirement that schools "purge from the public sphere all that in any way

partakes of the religious," which would "promote the kind of social conflict the Establishment Clause seeks to avoid." *Van Orden v. Perry*, 545 U.S. 677, 699 (2005) (Breyer, J., concurring in the judgment).

II. THE COURT SHOULD GRANT THE PETITION AND BRING CLARITY TO THE JURISPRUDENCE REGARDING THE INTERSECTION OF GOVERNMENT SPEECH AND THE FIRST AMENDMENT'S RELIGION CLAUSES.

Members of the Court have well documented the confusion that pervades Establishment Clause jurisprudence. *See, e.g.*, *Rosenberger*, 515 U.S. at 861 (Thomas, J., concurring in the judgment) (noting that jurisprudence in this area remains in "hopeless disarray"); *McCreary Cty. v. ACLU*, 545 U.S. 844, 859 n.10 (2005) (acknowledging that "Establishment Clause doctrine lacks the comfort of categorical absolutes")*; see also* Steven G. Gey, *Reconciling the Supreme Court's Four Establishment Clauses*, 8 U. PA. J. CONST. L. 725, 725, 728-64 (2006) (noting that Members of the Court have advocated no fewer than *ten* different standards for the Establishment Clause). Calls for the "substantial revision" of Establishment Clause jurisprudence have come from litigants and jurists alike. *E.g.*, *Cty. of Allegheny v. ACLU*, 492 U.S. 573, 656 (1989) (Kennedy, J., concurring in the judgment in part and dissenting in part). But resolution of this case could involve a much more modest effort.

Here, the Court should grant the petition and reaffirm the principles underlying its government-

speech doctrine and the Constitution's religion clauses. Individual speakers who control the content, timing, and even the very existence of their speech retain First Amendment protections even when they are at work at a government employer. The Court's guidance even in this narrow area would be welcomed by government employers and employees alike.

A. The Concurring Opinion in This Case Highlights the Judiciary's Lingering Confusion Concerning the Intersection of Government Speech and the First Amendment's Religion Clauses.

1. In his opinion specially concurring in the judgment, Judge Smith wrote separately to explain his view that the Bremerton School District was justified in stopping Kennedy's silent prayers in order to avoid a potential Establishment Clause violation, Pet. App. 37, and that any resumption of Kennedy's silent prayers "would clearly result in an actual Establishment Clause violation," Pet. App. 38-39 n. 1. The concurrence seeks to justify its Establishment Clause analysis by relying on the Court's decision in *Santa Fe.* Pet. App. 38-42. But that reliance is misplaced.

In *Santa Fe*, the Court considered whether the history and context of *the school's conduct* would lend a perception that "prayer is, in actuality, encouraged by the school." *Santa Fe*, 530 U.S. at 308. Unsurprisingly, the Court concluded that it would. No such context exists here with respect to the District's conduct. Quite the contrary—the District

had no policy encouraging prayer, the District remained unaware of Kennedy's prayers for many years, and the District suspended Kennedy's employment relationship upon his refusal to cease his prayers. The concurrence waives away these significant distinctions on the flimsiest of rationales, suggesting that Kennedy's "duty to communicate demonstratively to students and spectators" and his access to the field after the game "would bolster the perception that the District was endorsing religion." Pet. App. 43. Nothing in the District's conduct has encouraged Kennedy's prayers, and any objective, informed observer would be aware of this.

Santa Fe also involved prayers conducted over loud speakers, for all in attendance to hear. The Ninth Circuit, however, has forbidden even Kennedy's silent prayer that would be heard by no one. The concurrence justifies this result by saying that observers would nevertheless see Kennedy kneeling down—which it calls a "distinctively Christian prayer form"—and that by this act, the District would signal to non-adherents that they are outsiders. Pet. App. 44-45. That implies that the Ninth Circuit should have allowed the silent prayers so long as Kennedy was willing to remain standing, but nothing in the decision suggests that it would have done so. The concurrence's misapplication of *Santa Fe* is obvious, but if it goes uncorrected by this Court, it will no doubt be used to further erode the free exercise rights of public educators and coaches in the Ninth Circuit and perhaps beyond, due to a misconceived notion of the reach of the Establishment Clause.

2. The missteps made in this case are unfortunately not unique. For example, the Third Circuit has held that a coach violated the Establishment Clause by silently bowing his head and taking a knee when his players were praying. *Borden v. Sch. Dist. of East Brunswick*, 523 F.3d 153, 174-76 (3d Cir. 2008). And the Ninth Circuit has previously held that a "school district's interest in avoiding an Establishment Clause violation trumps [an educator's] right to free speech," and that this interest applies not merely during instructional time, but also before and after the school day, between classes, and during the lunch break. *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994). If school districts wield such all-encompassing power to suppress their employees' personal speech, then *Tinker*'s promise that teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" rings completely hollow. *Tinker*, 393 U.S. at 506.

Other courts, however, have recognized that public educators' free-exercise rights can coexist with the Establishment Clause's limitations. For example, the Eighth Circuit has recognized that teachers may participate in an after-school religious club. *Wigg v. Sioux Falls Sch. Dist. 49-5*, 382 F.3d 807, 815 (8th Cir. 2004). And the Supreme Court of Ohio has acknowledged that the placement of a Bible on a teacher's desk does not violate the Establishment Clause. *Freshwater*, 1 N.E.3d at 352-53. In recognizing that educators' free-exercise rights are compatible with the Establishment Clause, these

decisions embody the principles from *Mergens* that "schools do not endorse everything they fail to censor" and that a governmental "fear of a mistaken inference of endorsement is largely self-imposed." 496 U.S. at 250-51. The Ninth Circuit failed to follow these principles.

B. Lingering Confusion Concerning the Intersection of Government Speech and the First Amendment's Religion Clauses Disserves Both Governmental Entities and Their Employees.

Uncertainty even in this narrow area of the law warrants the Court's prompt attention because individuals and governments alike are without sufficient guidance as to what is permissible private religious speech of government employees. And the confusion leads to erroneous decisions like this one—based upon an overly expansive view of government speech and an overly sensitive fear of the Establishment Clause—which tend to unnecessarily trample the speech and free-exercise rights of public employees.

1. Governmental entities are often put in an impossible situation: allow a religious activity and get sued on Establishment Clause grounds by those who object to the activity or disallow the activity and get sued on Free Speech and Free Exercise grounds by those who wish to participate in the activity. There can be little doubt that had the District permitted Kennedy to continue his silent prayers, the District would have been sued by objectors rather than

Kennedy. Pet. App. 44 n.3 (noting an amicus brief filed in support of the District's decision to stop Kennedy's prayer practice).

This no-win situation is particularly acute in the public-school context. *See, e.g.*, Brett A. Geier & Annie Blankenship, *Praying for Touchdowns: Contemporary Law and Legislation for Prayer in Public School Athletics*, 15 First Amend. L. Rev. 381, 425 (2017) (noting that "[u]nfortunately, for school officials, either decision meets disapproval from one group or another"); Sarah M. Isgur, Note, *"Play in the Joints": The Struggle to Define Permissive Accommodation Under the First Amendment*, 31 Harv. J. L. & Pub. Pol'y 371, 371 (2008) ("Public schools in particular have been caught in the crossfire between the mandate of the Free Exercise Clause and the prohibition of the Establishment Clause."). It is thus unsurprising that school districts sometimes err on the side of the Establishment Clause, while other times school districts err on the side of the Free Exercise Clause. *Compare, e.g.*, Pet. App. 44 n. 2 (noting that the Bremerton School District issued a letter to the community that it could not permit Kennedy's prayers to continue without endorsing religion), *with Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 (5th Cir. 1995) (noting that the Duncanville Independent School District took the position that prohibiting its employees from participating in prayers would violate their speech and free-exercise rights).

Thus, governmental entities with even the best intentions are often unable to avoid costly litigation when their employees seek to exercise their First Amendment rights. A decision in this case reversing the judgment of the Ninth Circuit and clarifying that employee-driven speech that is not encouraged, sponsored or controlled by the employer is private speech that does not violate the Establishment Clause, would help alleviate this burden on government employers.

2. Government employees are likewise ill-served by the uncertainty. Given the fine line between what the Establishment Clause prohibits and what the Free Exercise Clause requires, any time a governmental employer prohibits speech based upon an erroneous interpretation of what the Establishment Clause requires it to do, that employer does so at the expense of its employee's rights. Decisions such as the Ninth Circuit's encourage government employers to err on the side of censorship. The Ninth Circuit's erroneous ruling that schools are now the sponsor of any speech undertaken by teachers or coaches in view of students will have a chilling effect on the speech and free-exercise rights of public employees if it is not reviewed by the Court.

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Only the Court can provide a solution to the current confusion in the jurisprudence in this area. *See Utah Highway Patrol Ass'n v. Am. Atheists, Inc.*, 132 S.Ct. 12, 17 (2011) (Thomas, J., dissenting from the denial of certiorari) (observing that "it is the very

flexibility of this Court's Establishment Clause precedent that leaves it incapable of consistent application"). Public school districts, officials, and employees would all benefit from a clarification of the law regarding the intersection of government speech and the First Amendment's religion clauses. This case provides the Court with an appropriate vehicle to provide that much-needed clarification.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari.

Respectfully submitted.

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August 1, 2018