FIRST LIBERTY

# KENNEDY V. BREMERTON SCHOOL DISTRICT

United States Supreme Court | June 27, 2022

**Vote:** 6-3

**Opinion Author:** Gorsuch (joined by Roberts, Thomas, Alito, Kavanaugh, and Barrett)

## SUMMARY

The Free Exercise and Free Speech Clauses doubly protect the rights of government employees to engage in private religious expression. The Supreme Court overruled the anti-religion *Lemon* test, replacing it with an originalist Establishment Clause test based on "historical practices and understandings.'"

## CASE BACKGROUND

Joe Kennedy was a high school football coach from Bremerton, Washington. He was fired for kneeling and saying a brief, quiet, personal prayer at the 50-yard line after high school football games. The lower court ruled that, because Coach Kennedy was a government employee, his prayer was government speech and an unconstitutional government endorsement of religion in violation of the Establishment Clause. The Supreme Court took the case and issued an opinion on the case in June 2022.

## THE OPINION

The Supreme Court held that Coach Kennedy's 50-yard line prayers were his personal speech, not government speech. For that reason, his prayers did not violate the Establishment Clause. Private religious speech is "doubly protected" by the Free Speech and Free Exercise Clauses of the First Amendment. The government's censorship of Coach Kennedy's prayers, merely because they were religious, was unconstitutional religious discrimination. According to the Court, "[t]he Constitution neither mandates nor tolerates that kind of discrimination."

The Court overturned *Lemon v. Kurtzman*, a highly problematic Supreme Court opinion stating that government "endorsement" of religion violates the Establishment Clause. Previously, in First Liberty's *American Legion* case, the Court ruled that *Lemon* does not apply to public displays, such as cross-shaped veterans' memorials. In *Kennedy*, the Court said that *Lemon* was an "ambitious, abstract, and ahistorical" approach to the Establishment Clause and that it no longer applies in any context, including to the speech of teachers, coaches, or other government employees. The Establishment Clause does not require the government to be hostile to religion or purge from the public sphere anything an observer could believe endorses religion. Instead, courts should look to "historical practices and understandings" to determine whether a public display of religion violates the Establishment Clause.

## RELIGIOUS LIBERTY IMPLICATIONS

All Americans—including government employees—have a right to engage in private religious expression. The right to engage in such expression is doubly protected by the Free Speech and Free Exercise Clauses of the First Amendment. Governments may not engage in religious discrimination by censoring the personal speech of government employees because their speech is religious. Governments also may not purge religion from the public square in an effort to avoid the appearance of government endorsement of religion.

## KEY QUOTE

"Respect for religious expressions is indispensable to life in a free and diverse Republic—whether those expressions take place in a sanctuary or on a field, and whether they manifest through the spoken word or a bowed head."

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