No. 22-11222

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CAMBRIDGE CHRISTIAN SCHOOL, INC.,

Plaintiff-Appellant,

v.

FLORIDA HIGH SCHOOL ATHLETIC ASSOCIATION, INC.,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Middle District of Florida
Case No. 8:16-cv-02753, Hon. Charlene Edwards Honeywell

BRIEF IN SUPPORT OF APPELLEE AND AFFIRMANCE OF *AMICI CURIAE* AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; AMERICAN CIVIL LIBERTIES UNION; ACLU OF FLORIDA; ADL (ANTI-DEFAMATION LEAGUE); CENTRAL CONFERENCE OF AMERICAN RABBIS; HINDU AMERICAN FOUNDATION; MEN OF REFORM JUDAISM; METHODIST FEDERATION FOR SOCIAL ACTION; NATIONAL COUNCIL OF JEWISH WOMEN; RECONSTRUCTIONIST RABBINICAL ASSOCIATION; UNION FOR REFORM JUDAISM; AND WOMEN OF REFORM JUDAISM

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In addition to the persons listed in the briefs already filed in this appeal, the following persons have an interest in the outcome of this appeal:

ACLU of Florida.

ADL (Anti-Defamation League).

American Civil Liberties Union.

Americans United for Separation of Church and State.

Central Conference of American Rabbis.

Freeman, Steven.

Hindu American Foundation.

Hybel, Gabriela.

Kalra, Samir.

Katskee, Richard.

Luchenitser, Alex.

Mach, Daniel.

Men of Reform Judaism.

Methodist Federation for Social Action.

National Council of Jewish Women, Inc.

Reconstructionist Rabbinical Association.

Shukla, Suhag.

Tilley, Daniel.

Union for Reform Judaism.

Women of Reform Judaism.

Amici certify that, to their knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/ Alex J. Luchenitser
Alex J. Luchenitser
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INTERESTS OF THE *AMICI CURIAE*[1]

Amici are religious and civil-rights organizations that share a commitment to preserving the constitutional principles of religious freedom and separation of religion and government. *Amici* believe that when public institutions incorporate prayer into their events, they infringe the fundamental right of members of the public to decide for themselves what religious practices to undertake. *Amici* therefore oppose Cambridge Christian School's attempt to misuse the First Amendment's Free Exercise Clause to subject a captive audience at a state event to communal prayer over a public-address system.

The *amici* are:

- Americans United for Separation of Church and State.
- American Civil Liberties Union.
- ACLU of Florida.
- ADL (Anti-Defamation League).
- Central Conference of American Rabbis.
- Hindu American Foundation.
- Men of Reform Judaism.

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief.

- Methodist Federation for Social Action.
- National Council of Jewish Women.
- Reconstructionist Rabbinical Association.
- Union for Reform Judaism.
- Women of Reform Judaism.

STATEMENT OF THE ISSUES

1. Whether the First Amendment's Free Exercise Clause required a state athletic association to permit two religious schools to use a stadium's public-address system to lead a captive audience in prayer during a state football championship's pregame ceremony, where participating schools are not given access to the public-address system during the pregame ceremony for any other purpose.

2. Whether granting the schools access to the public-address system for communal prayer in these circumstances would have violated the First Amendment's Establishment Clause.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Florida High School Athletic Association did not violate the Free Exercise Clause by declining to provide Cambridge Christian School special access to the public-address system at a state football championship for the purpose of leading communal prayer during a pregame ceremony. The Free Exercise Clause prohibits government from

discriminating against religion. It does not grant religious institutions a right to extract special benefits from the government that are not available to others.

Here, the Athletic Association has not discriminated against religion. The Athletic Association does not permit any participating school to deliver any kind of message over the public-address system during pregame ceremonies at football championships. And far from acting with hostility toward religion, the Athletic Association has allowed religious speech in a wide variety of circumstances in which comparable nonreligious speech was permitted, including by letting Cambridge Christian and its opponent publicly pray together on the field before and after the championship game.

But more than being constitutionally permissible, the Athletic Association's actions were constitutionally required. For the Athletic Association—a state actor—would have violated the Establishment Clause if it had granted Cambridge Christian special access to the public-address system for prayer. That would have coerced attendees of the championship game, including vulnerable youths, to participate in a religious exercise at a state event. And by providing an exclusive benefit solely to religious

schools and solely for prayer, the Athletic Association would have improperly favored religion over nonreligion.[2]

ARGUMENT

I. The Free Exercise Clause did not require the Athletic Association to broadcast prayer at the championship game.

The district court correctly held that Cambridge Christian's free-exercise claim fails because the school did not demonstrate a sufficient burden on its sincere religious exercise under this Court's case law. *See* Doc. 167 at 31–37; *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1255–58 (11th Cir. 2012), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). But even if Cambridge Christian had presented sufficient evidence of burden, its free-exercise claim would still fail because the Athletic Association did not discriminate against religion. Rather, the Association declined to provide a special benefit to Cambridge Christian in the form of access to the public-address system for communal prayer at a time when participating schools are not permitted to use the system at all. The Free Exercise Clause does not require governmental bodies to grant such special favors to religious institutions.

[2] While *amici* write about the Free Exercise and Establishment Clauses, we also agree with the Athletic Association that it did not violate the Free Speech Clause.

To "prov[e] a free exercise violation," Cambridge Christian must show that the Athletic Association "has burdened [its] sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421–22 (2022) (quoting *Emp. Div. v. Smith*, 494 U.S. 872, 879–81 (1990)). Governmental conduct is not neutral if it "discriminate[s] on its face" or its "object or purpose . . . is the suppression of religion or religious conduct." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). Governmental actions are not generally applicable if they "in a selective manner impose burdens only on conduct motivated by religious belief." *Id.* at 543. Thus, in one way or another, a free-exercise plaintiff must ultimately show that the government has engaged in "discrimination against religion." *See Carson ex rel. O.C. v. Makin*, 142 S. Ct. 1987, 1998 (2022).

Cambridge Christian has not made that showing here. The Athletic Association does not allow *any* participating school to deliver *any* sort of message over the public-address system during pregame ceremonies of championship games. (Doc. 167 at 19–21, 24.) By declining Cambridge Christian's request for special access to the public-address system during those ceremonies, the Athletic Association did not disfavor religion in any manner.

Far from discriminating against religious expression, the Athletic Association has a long history of allowing private religious speech in contexts where it has permitted private nonreligious speech. Cambridge Christian admits that the Athletic Association has allowed a team's cheerleaders to display at a championship game a banner reading, "One Victory One HeartBeat One God"; has televised a player saying, "I can't do it without God giving me the ability to do all these things"; and has broadcast a team's prayer live on its Facebook page. (Appellant's Br. 15–17.) Indeed, at the very game where it denied Cambridge Christian's request to use the public-address system for communal prayer, the Athletic Association permitted the school and its opponent to pray together before the game at midfield and again after the game. (Doc. 158 at 8, ¶¶ 46–47.)

And none of the nonreligious speech that Cambridge Christian cites in support of its free-exercise claim evinces discrimination against religion. Cambridge Christian argues that host schools have been or may be allowed to make opening welcoming remarks at certain games. (Appellants' Br. 39.) But because championship games are held at neutral locations, those games have no host school—the Athletic Association is the host. (Doc. 167 at 16–17, 21.) So participating schools are *not* allowed to make welcoming—or any other—remarks during pregame ceremonies at

championships (Doc. 167 at 21), and it was not discrimination against religion to deny Cambridge Christian's request to use the public-address system for communal prayer then.

Cambridge Christian next relies on the Athletic Association's reading of messages from paid sponsors during games. (Appellants' Br. 39–40.) But those messages are presented during breaks in play after the game starts (Doc. 167 at 22), not during the pregame ceremony, which is when Cambridge Christian wanted to deliver its communal prayer. Moreover, the sponsors have to pay to have their messages read, while Cambridge Christian sought to use the public-address system for free. (Doc. 158 at 7, ¶¶ 40–43.) Cambridge Christian's reliance on the sponsors' messages thus highlights only that it wanted preferential treatment, not equal treatment. As Justice Kavanaugh has noted, however, the Free Exercise Clause "do[es] *not* require that religious organizations be treated *more favorably* than all secular organizations." *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2613 (2020) (Kavanaugh, J., dissenting from denial of application for injunctive relief).

Cambridge Christian further points out that, at halftime, participating schools are allowed to use the public-address system to play music for their band performances and to introduce the performances. (Appellant's Br. 23; *see also* Doc. 167 at 20 n.9, 24.) But this is the only

time when—and the only manner in which—participating schools may use the public-address system during championship games. (Doc. 167 at 24.) And Cambridge Christian itself states that religious music would be allowed. (Appellant's Br. 23.) Once more, Cambridge Christian's evidence shows nothing other than equal treatment of religious and nonreligious speech: No participating schools are allowed to use the public-address system during opening ceremonies—or at any time other than halftime, and even then only for the limited purpose of playing and introducing music, with no discrimination or different treatment based on whether the music is religious in nature.

The last category of speech that Cambridge Christian cites in support of its discrimination argument is speech that is indisputably government speech of the Athletic Association. (*See* Appellants' Br. 40.) In Cambridge Christian's view, because the Athletic Association used a public-address system to deliver *its own* nonreligious messages on topics such as mourning the victims of a school shooting, it was obligated to broadcast communal prayer by Cambridge Christian also. (*See* Appellant's Br. 19–21, 40.) The government's use of its own resources for its own speech or activities does not, however, give religious institutions a free-exercise right to access those resources for religious activities. "While the Free Exercise Clause clearly prohibits the use of state action to deny the

rights of free exercise to anyone, it has never meant that a majority could use the machinery of the State to practice its beliefs." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 226 (1963). "For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 451 (1988) (quoting *Sherbert v. Verner*, 374 U.S. 398, 412 (1963) (Douglas, J., concurring)).

For example, as the Supreme Court recently reaffirmed in *Carson*, 142 S. Ct. at 2000, a state's operation of a public school system does not give religious schools a right under the Free Exercise Clause to a subsidy for their private, religious education. This result is consistent with the settled principle of free-speech law that when government itself is the speaker, it is not required to make the property or resources used for its speech available to private speakers. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833–34 (1995). Cambridge Christian's contrary view of the Free Exercise Clause would lead to absurd results: If a state governor were to deliver a secular speech at the statehouse on the importance of education, for instance, the governor would then be required to allow any

interested audience member to deliver from the governor's podium a speech on education from a religious perspective.

Finally, the Athletic Association's decision was not motivated by any hostility toward religion. This is not a case such as *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1729–30 (2018), in which members of a state civil-rights commission made antireligious remarks as part of an official adjudicative proceeding and concluded that a baker's religiously motivated denial of service violated a state public-accommodations statute, while treating as lawful secularly motivated denials that the Court viewed as comparable. Nor is this case like *Kennedy*, 142 S. Ct. at 2422–23, where a school district barred a coach's postgame "private, personal" prayers "because of their religious character" while simultaneously allowing coaches to engage in other private, personal postgame conduct that was nonreligious. Here, there is no evidence of antireligious statements, no different treatment of comparable nonreligious conduct, and no other basis to even infer an antireligious motive.

Indeed, far from being antireligious, the Athletic Association's decisionmaker who denied Cambridge Christian's request has served as a sponsor for the Fellowship of Christian Athletes and has participated in prayers in that capacity. (Doc. 135-3 at 18:25–19:5.) Moreover, as noted

above, the Athletic Association permitted Cambridge Christian and its opponent to pray together (without use of the public-address system) on the field before and after the championship game. (Doc. 158 at 8, ¶¶ 46–47.) Instead of being motivated by hostility toward religion, the Association was concerned that giving Cambridge Christian a special privilege to use the public-address system for communal prayer could have been unlawful. (Doc. 136-22; Doc. 136-23.) As we explain next, that concern was valid, for the Athletic Association would have run afoul of the Establishment Clause had it granted Cambridge Christian's request.

II. Granting Cambridge Christian's request to broadcast prayer at the championship game would have violated the Establishment Clause.

The Athletic Association's decision not to give Cambridge Christian special access to the public-address system for communal prayer was not only permissible under the Free Exercise Clause but also required by the Establishment Clause. Agreeing to Cambridge Christian's request would have coerced a captive audience, including impressionable children, to take part in a religious exercise at the championship game. It also would have improperly favored religion over nonreligion, as participating schools are not otherwise allowed to deliver messages over the public-address system during championship pregame ceremonies.

A. Broadcasting Cambridge Christian's prayer would have coerced public participation in a religious practice.

In *Lee v. Weisman*, 505 U.S. 577, 587 (1992), the Supreme Court emphasized, "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." The Court recently reaffirmed this principle in *Kennedy*, 142 S. Ct. at 2429. After noting that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings'" in a manner that "'faithfully reflec[ts] the understanding of the Founding Fathers,'" the Court stated that there is "[n]o doubt" that religious coercion "was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment." *Id.* at 2428–29 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576–77 (2014)).

As examples of the kinds of religious coercion that the Establishment Clause prohibits, the *Kennedy* Court cited (*id.* at 2431) *Lee*, 505 U.S. 577, and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000). In *Lee*, the Court "held that school officials violated the Establishment Clause by 'including [a] clerical membe[r]' who publicly recited prayers 'as part of [an] official school graduation ceremony.'" *Kennedy*, 142 S. Ct. at 2431 (quoting *Lee*, 505 U.S. at 580). In *Santa Fe*,

the Court "held that a school district violated the Establishment Clause by broadcasting a prayer 'over the public address system' before each football game," notwithstanding that the prayer would have been "student-led" and "student-initiated." *See Kennedy*, 142 S. Ct. at 2431 (quoting *Santa Fe*, 530 U.S. at 294); *Santa Fe*, 530 U.S. at 301.

The Athletic Association—which is a state actor (Doc. 158 at 2, ¶ 7)—would have committed a similar violation of the Establishment Clause's anti-coercion principle had it acceded to Cambridge Christian's demand to broadcast communal prayer during the pregame ceremony. As in *Lee*, the prayer would have been incorporated in an official governmental ceremony. And as in *Santa Fe*, the prayer would have been presented over the public-address system at a high-school football game.

The facts here are far different from those of *Kennedy*, where the Court concluded that there was no evidence of religious coercion because the coach's prayer was "private," "personal," and "quiet"; did "not involve leading prayers" with others; and was "not publicly broadcast or recited to a captive audience." *See* 142 S. Ct. at 2422, 2429, 2432–33. Here, Cambridge Christian sought to publicly lead a captive audience in prayer over the public-address system. (Appellant's Br. 12.)

Indeed, that the prayer would have involved a captive audience in a school context triggers heightened Establishment Clause concerns. "[T]he

[Supreme] Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools" because "[s]tudents in such institutions are impressionable and . . . susceptib[le] to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987); *see also Lee*, 505 U.S. at 592–93. The incomplete neurobiological development of adolescents makes them especially likely to go along with a crowd. *See, e.g.*, Eva H. Telzer et al., *Neurobiological Sensitivity to Social Rewards and Punishments Moderates Link Between Peer Norms and Adolescent Risk Taking*, 92 Child Dev. 731, 731 (2021). They are likely to "conform[ ] to the norms and behaviors of their peer group" even when they are not directly rewarded or punished for their behavior; the "mere threat of peer rejection is enough to limit group deviance and increase adherence to social norms." *Id.* at 732. Thus Jewish, Muslim, Hindu, or atheist teenagers in the crowd at the championship game would have experienced tremendous pressure to go along with Cambridge Christian's prayer even if it was inconsistent with—or explicitly contrary to—their or their families' own religious beliefs.

That both participating teams came from Christian schools or that many of the fans in attendance might have subscribed to the religious beliefs reflected in the prayer would not have rendered it noncoercive. "What to most believers may seem nothing more than a reasonable

request that the nonbeliever respect their religious practices . . . may appear to the nonbeliever or dissenter to be an attempt to employ the machinery of the State to enforce a religious orthodoxy." *Lee*, 505 U.S. at 592. For a solitary dissenter in the crowd, the state-sponsored religious practice might have been made even more coercive by the seemingly all-embracing support for the prayer. A majority's support for prayer "does not lessen the offense or isolation to the objectors" but instead "increases their sense of isolation and affront." *Santa Fe*, 530 U.S. at 305 (quoting *Lee*, 505 U.S. at 594). It would require exceptional determination for a young fan to stand with the crowd for the National Anthem but then to sit and publicly abstain from the state-sponsored prayer seconds later.

B. Broadcasting Cambridge Christian's prayer would have unconstitutionally favored religion.

In addition to violating the anti-coercion principle, the Athletic Association would have contravened another fundamental Establishment Clause rule if it had given Cambridge Christian special access to the public-address system for communal prayer: Government must not favor religion over nonreligion and so must not provide special benefits to religious groups that others do not likewise enjoy.

Cambridge Christian tries to make much (Appellants' Br. 2–3, 41–42) of the Supreme Court's statement in *Kennedy*, 142 S. Ct. at 2427, that

the Court had "long ago abandoned" the *Lemon* and endorsement tests that had been used in some Establishment Clause cases.[3] But that does not help Cambridge Christian. As noted above, the *Kennedy* Court also reminded lower courts that "the Establishment Clause must be interpreted by 'reference to historical practices and understandings'" in a manner that "'faithfully reflec[ts] the understanding of the Founding Fathers.'" 142 S. Ct. at 2428 (quoting *Greece*, 572 U.S. at 576–77). The Supreme Court has repeatedly reaffirmed, based on such historical analysis, the principle that government must be neutral between religion and nonreligion instead of favoring the former over the latter.

The line of cases in which the Court has done so begins with *Everson v. Board of Education*, 330 U.S. 1 (1947). There, the Court reviewed in detail the European and colonial-era abuses and religious strife that the Establishment Clause was enacted to end, as well as the writings of Founders who played "leading roles" in the Clause's "drafting and adoption." *Id.* at 8–13. Through that review, the Court identified a set of fundamental Establishment Clause principles:

[3] The *Lemon* test "called for an examination of a law's purposes, effects, and potential for entanglement with religion," while the endorsement test asked "whether a 'reasonable observer' would consider the government's challenged action an 'endorsement' of religion." *Kennedy*, 142 S. Ct. at 2427 (quoting *Cnty. of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 593, 620 (1989)).

> Neither a state nor the Federal Government can set up a church. *Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.* Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.* Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.

Id. at 15–16 (emphasis added). The Court quoted this language approvingly in *Torcaso v. Watkins*, 367 U.S. 488, 492–93 (1961), after conducting more historical analysis of the Clause (*id.* at 490–92) that was subsequently cited with approval in *Kennedy*, 142 S. Ct. at 2428.

One year after deciding *Torcaso*, in *Engel v. Vitale*, 370 U.S. 421 (1962)—which struck down a public school district's policy of beginning each school day with prayer—the Court conducted another detailed analysis of the historical foundation for the Establishment Clause. The Court emphasized that governmental officials' practice of prescribing particular prayers and religious exercises was one of the major European and colonial-era abuses that the Establishment Clause was intended to stop. *Id.* at 425–30. "By the time of the adoption of the Constitution . . . many Americans . . . knew, some of them from bitter personal experience,

that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services." *Id.* at 429. Thus "the First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the . . . [g]overnment would be used to control, support or influence the kinds of prayer the American people can say." *Id.* For "[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." *Id.* at 431. And "a union of government and religion tends to destroy government and to degrade religion." *Id.*

The following year, in *Abington*, 374 U.S. 203, the Court held unconstitutional the practice of mandatory Bible readings at the beginning of the public-school day. The Court again looked to European and colonial history and the views of leading Founders for guidance on the Establishment Clause's meaning. *See id.* at 214. At the heart of that meaning, the Court concluded, is the principle that "[i]n the relationship between man and religion, the State [must be] firmly committed to a position of neutrality." *Id.* at 226. This "wholesome 'neutrality,'" explained the Court, "stems from a recognition of the teachings of history that

powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies." *Id.* at 222. And the Court specifically determined "that the concept of neutrality . . . does not permit a State to require a religious exercise even with the consent of the majority of those affected," and that this does not "collide[ ] with the majority's right to free exercise of religion." *Id.* at 225–26.

More recently, in *McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 875–81 (2005), the Court once more carefully analyzed European and early American history, together with the writings of leading Founders, in affirming that "[a] sense of the past . . . points to governmental neutrality as an objective of the Establishment Clause." The Court also affirmed that "the principle of neutrality" means that "the government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals under the Free Exercise Clause." *Id.* at 875–76.

The Supreme Court has repeatedly applied this principle. For example, in *Board of Education v. Grumet*, 512 U.S. 687, 690, 705 (1994), the Court invalidated a state's creation of a special school district to match the boundaries of a religious enclave, explaining that the state had

"violate[d] the requirement of governmental neutrality" toward religion "by extending the benefit of a special franchise" to a religious group. In *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 708–10 (1985), the Court struck down a statute that gave religious employees an unqualified right not to work on their Sabbath without giving any comparable right to nonreligious employees, as this resulted in "Sabbath religious concerns automatically control[ling] over all secular interests at the workplace." And in *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989), the Court ruled that a state ran afoul of the Establishment Clause by granting a sales-tax exemption for certain religious publications but no nonreligious publications.

The Athletic Association would have contravened the Establishment Clause's mandate of religious neutrality if it had granted Cambridge Christian's request for use of the public-address system for pregame communal prayer. As we have emphasized, no participating school is permitted to broadcast any kind of nonreligious speech over the public-address system during the pregame ceremony. (Doc. 167 at 19–21, 24.) Providing Cambridge Christian special access to the system for a religious exercise would have favored religion over nonreligion. And that would have ignored the "timeless lesson . . . that if citizens are subjected to state-sponsored religious exercises, the State disavows its own duty to guard

and respect that sphere of inviolable conscience and belief which is the mark of a free people." *See Lee*, 505 U.S. at 592.

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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Date: October 14, 2022

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the parts of the brief exempted by Rule 32(f), it contains 4,400 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared using Microsoft Word in Century Schoolbook font measuring no less than 14 points.

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