

No. 21-418

IN THE
Supreme Court of the United States

JOSEPH A. KENNEDY,
Petitioner,

v.

BREMERTON SCHOOL DISTRICT,
Respondent.

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

BRIEF OF FORMER PROFESSIONAL FOOTBALL
PLAYERS OBAFEMI D. AYANBADEJO, SR.,
CHRISTOPHER J. KLUWE, AND FRANK T.
LAMBERT, AND VARIOUS COLLEGIATE
ATHLETES AND COACHES, AS *AMICI*
CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*¹

This *amicus* brief is submitted on behalf of former professional and collegiate athletes and coaches who have first-hand experience with the unique dynamics inherent in the coach-athlete relationship.

Amicus curiae Obafemi D. Ayanbadejo, Sr., is a former collegiate and professional football player. After playing college football at San Diego State University, Mr. Ayanbadejo played in the National Football League (NFL) for the Minnesota Vikings (1997–1999); the Baltimore Ravens (1999–2002, during which he earned a Super Bowl Ring in the 2000 season); the Miami Dolphins (2002–2003); the Arizona Cardinals (2004–2007); and the Chicago Bears (2007).

Amicus Curiae Christopher J. Kluwe is a former collegiate and professional football player. After his collegiate career at the University of California Los Angeles, Mr. Kluwe was picked up as an undrafted free agent by the Seattle Seahawks, and played a total of eight years in the NFL, primarily with the Minnesota Vikings (2005–2012). Mr. Kluwe also has experience coaching football and currently serves as a football coach at a local high school.

¹ All parties provided blanket consent to the filing of *amicus* briefs. See Sup. Ct. R. 37.3(a). Per Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

Amicus curiae Professor Frank T. Lambert is a former collegiate and professional football player. Professor Lambert played football at the University of Mississippi and later played for the Pittsburgh Steelers in the NFL from 1965–1966. Professor Lambert is an Emeritus Professor of History at Purdue University in West Lafayette, Indiana, where his academic research focuses on American Colonial and Revolutionary-Era history. Professor Lambert is widely published on issues concerning the separation of church and state. See, *e.g.*, Frank Lambert, SEPARATION OF CHURCH AND STATE: FOUNDING PRINCIPLE OF RELIGIOUS LIBERTY (2014); Frank Lambert, THE FOUNDING FATHERS AND THE PLACE OF RELIGION IN AMERICA (2003).

Amici also include the following former collegiate athletes and coaches:

- Rebecca Cusumano-Seidel: former collegiate basketball athlete at Wellesley College; former basketball head coach at Bryn Mawr College; former assistant basketball coach at Swarthmore College and Amherst College; former assistant basketball coach and teaching fellow at Smith College.
- Meghan Holden: former collegiate equestrian athlete at Wheaton College (MA).
- Philip G. Kircher: former collegiate basketball athlete at Drexel University.
- Taylor Landesman: former collegiate water polo athlete at Fordham University.

- James Perry: former collegiate football athlete at the University of Buffalo; former football head coach at various high schools.
- Toni Smith-Thompson: former collegiate basketball athlete at Manhattanville College.
- Patrick Stanley: former collegiate water polo athlete at Fordham University.
- Gui Stampur: former collegiate soccer athlete at Columbia University.
- Dr. Charles P. Sullivan: former collegiate rowing athlete at Princeton University; former rowing coach at the University of Michigan, Eastern Michigan University, University of California Santa Barbara, and University of Kansas.
- Reverend Lori Walke: former collegiate basketball athlete at Oklahoma State University.

SUMMARY OF ARGUMENT

This case presents, among other issues, the question whether the Bremerton School District would have violated the Establishment Clause of the United States Constitution were it to have permitted Bremerton High School’s assistant varsity football coach, Joseph A. Kennedy, to continue to engage in public prayer with players on the 50-yard line of the school’s football field at the conclusion of games. *Amici* believe it would have. See *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 761–62 (1995) (“[C]ompliance with the Establishment

Clause is a state interest sufficiently compelling to justify content-based restrictions on speech.”).

The Establishment Clause provides that “Congress shall make no law respecting an establishment of religion.” U.S. Const. amend. I. The Clause “mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 860, (2005) (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). This Court has stressed that the Establishment Clause “guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Lee v. Weisman*, 505 U.S. 577, 587 (1992); see also *id.* at 604 (Blackmun, J., concurring) (although “proof of government coercion is not necessary to prove an Establishment Clause violation, it is sufficient.”).

In analyzing whether Mr. Kennedy’s public prayers—which were often joined by most of the football team (J.A. 169)—had the propensity to be coercive to players, this Court should consider the relationship dynamics inherent in the coach-athlete relationship. This relationship is unique because it is highly susceptible to being coercive. This Court has been “particularly vigilant in monitoring compliance with the Establishment clause” in the elementary and secondary school context because, in the school setting, the “State exerts great authority and coercive power” and because of “the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987). Such

emulation and susceptibility to peer pressure does not end at the classroom door. It extends—and, indeed, may be even more pronounced—on the school football field.

The coercive nature of the coach-athlete relationship derives from at least four factors: (1) coaches are authority figures; (2) coaches hold the keys to athletes' success; (3) a coach's sphere of influence and control often extends beyond the field; and (4) coaches have considerable influence over athletes.

First, coaches are authority figures who often provide emotional, social, and parental-like guidance to their players on matters on and off the field. As Mr. Kennedy himself recognized, a coach may be the “most important person [players] encounter in their overall life.” J.A. 323. The relationship between a coach and athlete is marked by the significant control the coach wields on one hand, and obedience shown by the players on the other. To this end, given a coach's position of considerable power and influence, players often view “suggestions” by coaches as essentially commands. To an athlete looking to appease the coach and be viewed as a “team player,” any claimed distinction between mandatory and optional team activities is often illusory.

Second, coaches not only control the amount of playing time players are given, but also often hold the keys to future educational and professional opportunities. In understanding the potential coercive forces at play within the coach-athlete relationship, therefore, one must be cognizant of the

power dynamic and the inherent impulse for many athletes to remain in their coaches' good graces not only through performance on the field, but by their conformity and obedience off the field too.

Third, a coach's routine sphere of influence extends beyond games and formal training activities into other areas of an athlete's life, including diet, academics, social interests, and interpersonal relationships. Indeed, as Mr. Kennedy candidly explained, coaches in this country are involved in helping "kids be better people." J.A. 73–74. But there is a difference between dietary choices or class enrollments and religious endeavors. Just because a coach may be *positioned* to offer pastoral or religious guidance to the children in his or her care does not mean that it is either appropriate or constitutional for him or her to do so.

Fourth, social dynamics of adolescence may cause players to feel compelled to participate in the prayers conducted by their coaches and teammates. During these years, researchers have found there is a marked desire for social and peer approval. In a situation—like here—where an authority figure leads a prayer, and the majority of the team often joined in such prayers (at the invitation of the captain or other players), players are faced with the difficult choice of reluctantly acquiescing in the conduct of their coach and teammates or, quite literally, turning their backs on their coach and teammates. In the public school

setting, children should not be forced to make that choice.

The record here demonstrates that Mr. Kennedy's actions had the propensity to, and did, lead players to feel compelled to participate in Mr. Kennedy's expressions of faith even if they would rather not have done so. Accordingly, *amici* urge the Court to affirm the decision of the Ninth Circuit below and re-affirm the bedrock principle that in the captive setting of a public school, "the government may not coerce [children] to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587.

ARGUMENT

MR. KENNEDY'S 50-YARD-LINE PRAYERS WITH HIS TEAM INAPPROPRIATELY CAUSED PLAYERS TO FEEL COERCED TO PARTICIPATE IN RELIGIOUS ACTIVITY.

Missing from petitioner's arguments to this Court is any acknowledgment of the unique, and uniquely coercive, nature of the coach-player relationship in high school athletics. That critical frame through which one must view Mr. Kennedy's behavior demonstrates that the Bremerton School District appropriately stepped in to protect its student-athletes.

A. The Coach-Athlete Relationship Is Susceptible To Coercion.

This Court has recognized the unique susceptibility of children to coercive pressures in the educational context; it is for this reason "[t]he Court has been particularly vigilant in monitoring

compliance with the Establishment Clause in elementary and secondary schools.” *Edwards*, 482 U.S. at 583–84. This extra vigilance is necessary because, in the educational context, the “State exerts great authority and coercive power,” and because of “the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure.” *Id.* at 584; see also *Lee*, 505 U.S. at 592 (recognizing that “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools”); *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 390 (1985) (stressing that the “symbolism of a union between church and state is most likely to influence children of tender years, whose experience is limited and whose beliefs consequently are the function of environment as much as of free and voluntary choice”), *overruled on other grounds by Agostini v. Felton*, 521 U.S. 203, 235 (1997).

In evaluating whether Mr. Kennedy’s public prayers on the high school’s football field implicate the Establishment Clause, and in keeping with the Court’s repeated acknowledgment of the heightened risks of coercion in the educational setting, this Court should consider the unique relationship between coaches and athletes. That relationship is highly susceptible to the imposition of coercive pressure; to this end, student-athletes may feel subtle—yet nonetheless significant—pressure to participate in religious practices led by their coaches, even if not expressly required to do so. And that pressure will increase if the prayers occur, as here, while the coach

is on duty or, again as here, where their teammates are participating in the prayers.

1. Coaches are authority figures.

In the educational context, coaches occupy a unique role: They not only help guide students in developing the requisite physical skills and abilities to meet the demands of their chosen sport, but also often provide emotional, social, and parental-like guidance to many of their players with respect to life on and off the field. The influence that coaches have on shaping the minds and development of this country's youth cannot be overstated. See, e.g., Confirmation Hearing on the Nomination of Hon. Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States, S. Hr'g 115-545, 105th Cong. 111 (2018) (statement of Hon. Brett Kavanaugh) ("I know from my own life that those who teach and coach America's youth are among the most influential people in our country."); J.A. 323–324 (Mr. Kennedy recognizing that, "for some kids, the coach might even be the most important person they encounter in their overall life.")

As Jim Murray, a Pulitzer Prize-winning sports columnist, put it, "the last stand of dictatorship in this world is the college football coach. His word is law, his rule is absolute, his power is unlimited." Andrew Bagnato, *The Curious Cult of College Coaches*, in *ESPN COLLEGE FOOTBALL ENCYCLOPEDIA: THE COMPLETE HISTORY OF THE GAME* (Michael MacCambridge, ed. 2005), available at <https://www.espn.com/college-football/news/story?id=2179611>. High school coaches are no different. The role of a

coach has also been likened to that of a high-ranking military superior, a priest, and a surrogate parent. See *ibid.* (“The coach’s authority often seems as inviolable as that of an Army general.”); Ashley E. Stirling & Gretchen A. Kerr, *Abused athletes’ perceptions of the coach-athlete relationship*, 12(2) SPORT IN SOC’Y 227, 228 (2009) (the power of a coach has been likened to “that of a priest whose absolute knowledge is not questioned or challenged”); Greg Garber, *Belichick on Knight: ‘He’s not the same guy,’* ESPN.com (May 16, 2017), https://www.espn.com/nbc/columns/garber_greg/535061.html (“[A] coach is the ultimate authority figure, the surrogate parent.”).

The necessary corollary of an authoritative coach is the need for obedient, disciplined athletes. As one commentator has put it, “obedience seems to be the most essential ingredient for success in many American sports”; for this reason, “free-spirited athletes” often “find it difficult to stomach American style athletics.” Jack Scott, *THE ATHLETIC REVOLUTION* 127 (1971). It is through this prism that the relationship between coaches and student-athletes must be viewed. See Gil Fried & Lisa Bradley, *Applying the First Amendment to Prayer in a Public University Locker Room: An Athlete’s and Coach’s Perspective*, 4 MARQUETTE SPORTS L. J. 301, 311 (1994) (“[M]ost student-athletes defer to coaches because coaches are often their closest associates, mentors, and teachers.”). As former NFL football player, and signatory to this brief, Obafemi Ayanbadejo explains, “the deference that coaches can be shown can be crippling and scary” because athletes often know their “desire to be successful lies in their

coach's hands.”² This deference is grounded in a player's strong desire to win the approval of their coach. As signatory Meghan Holden relays, “[a]s a child and young adult, my coaches' approval meant everything to me. If they praised me, I was on top of the world. If they yelled at me, I was upset with myself for days, and embarrassed. I valued the approval of my peers second only to the approval of my coaches and family.”

Given a coach's position of power over athletes, players often view “suggestions” by coaches as, in fact, commands. As another signatory to this brief, Taylor Landesman, explains, “[c]omments and suggestions by someone who completely controls the team are taken as statements of action. Athletes want to remain in the good graces of the coach through performance on and off the field. One way to do this is to take the coach's suggestions for action as things you need to do.” Similarly, signatory, and former NFL player, Professor Frank Lambert explains that “coaches' ‘suggestions’ are tantamount to commands. When a coach suggests that a player perform in a particular way, he expects the player to execute accordingly.” If professional and college athletes view such “suggestions” as commands, this is all the more true for impressionable high school students.

To be sure, many of a coach's “suggestions” are likely to be about topics such as workouts or diet. Mr.

² All quotations from *amici curiae* referenced in this brief were collected in oral and written interviews conducted during the preparation of the brief.

Ayanbadejo notes that these “suggestions by coaches are not seen as optional.” He and his teammates would, for example, refer to “suggested” workouts by coaches as “mandatory-optional” activities. Just as a student-athlete will feel immense pressure to attend an “optional” workout, he or she will likely feel the same pressure to participate in any other “optional” team activity, such as a coach-led prayer. Indeed, as one signatory to this brief, Gui Stampur, explains, a coach’s “suggestions” are so important that “when a coach makes a suggestion, it is not only directed to the individual but, if heard by other team members, is taken as a directive as to ways in which other players should also act or behave.” An obedient athlete looking to impress the coach and be viewed as a “team player” would likely feel compelled to appease the coach by participating in any “optional” activity in which other teammates are participating.

2. Coaches hold the keys to athletes’ success.

The authoritative nature that typifies the coach-athlete relationship is exacerbated by the amount of control coaches have over an athlete’s ability to play his or her sport (by controlling whether, and the extent that, an athlete secures playing time), and more generally to affect the player’s advancement and future success. See Stirling *et al.*, *supra*, at 228 (“In general, [athletes] are in awe of coaches and authorities, who hold the key to potential success.”).

The coach of a sports team not only controls the composition of the team, but also determines the rank, position, and amount of playing time bestowed

upon each player. As Robert Turner II, a former NFL player, has highlighted, “[t]he first commandment of football is the same today as it was in the leather helmet days: listen to your coach. Do everything he says. Follow the rules. If you please the coach, you will play. The system around the coach will support your dreams of advancing to the next level.” See Robert W. Turner II, *NOT FOR LONG: THE LIFE AND CAREER OF THE NFL ATHLETE* 57 (2018). Similarly, Professor Lambert explains that the coach is the “ultimate decision-maker concerning who plays and how much. He alone decides the line-up [and] the plays.” To this end, “[p]layers want to play, and if they wish to play on a particular team, they must stay in the favor with the coaches.” Similarly, Mr. Stampur explains “we always seek to please Coach—after all, if the coach is happy we will likely receive more playing time.”

In the United States, sporting success at high school is what generally leads to collegiate sporting scholarships and, ultimately, professional sporting careers. As a result, high school coaches are often the initial gatekeepers to these prestigious educational and lucrative professional opportunities. Having a high school coach who is willing to recommend a player, or better yet proactively reach out to college scouts, may well make the difference between playing college football or not. As Mack Brown, the head football coach at the University of North Carolina, Chapel Hill, commented with respect to the college football recruiting process, “if a high school coach had any hesitation about a player, we were out!” Ross Hawley, *Recruiting Column: How your coach can help you land a scholarship*, USA TODAY (Sept. 25, 2019),

<https://usatodayhss.com/2019/recruiting-column-how-your-coach-can-help-you-land-a-scholarship>. This is because, as another college football coach described, “the alpha and the omega of the list of people [college coaches] trust regarding a recruit is the high school coach.” *Ibid.* It is for this reason that, “for a high school athlete, the power wielded by his head coach can be a blessing or a curse.” Turner, *supra*, at 59.

For players to succeed, therefore, they not only need to perform well athletically, but they must also win the approval and recognition of their coach. Professor Lambert explains that “[a]thletes who make the team strive to win a coach’s approval through different means.” While some players may impress coaches through their raw athletic talent, and others through their work ethic, there is also a category of players “whose talents and efforts fail to catch the coach’s eye, and some of these [players] become sycophants who through obsequious behavior try to curry the favor of the coach.” Professor Lambert notes it is these types of athletes that are perhaps the most vulnerable to coercion, given they are “drawn to anything that will get the coach’s attention.”

In understanding the potential coercive forces at play within the coach-athlete relationship, therefore, one must be cognizant of the power dynamic and the inherent impulse for many athletes to remain in their coaches’ good graces through unquestioning obedience.

3. A coach's sphere of influence and control often extends far beyond the field.

Coaches are intimately involved with the athletic development of players. But importantly, coaches influence almost all aspects of their players' lives, even well beyond the athletic field.

A "coach's influence often extends beyond training into other areas of an athlete's life"—including diet, academics, social interests, weight, sleep requirements, and interpersonal relationships. See Stirling *et al.*, *supra*, at 228; see also S. Jowett & I.M. Cokerill, *Olympic medallists' perspective of the athlete-coach relationship*, 4 PSYCHOL. OF SPORTS & EXERCISE 313, 314 (2003) ("[C]oaches' relationships with athletes are reciprocal, trusting, genuine, and helping in nature and go beyond merely teaching and instructing skills, techniques and tactics.") (citing G.A. Bloom *et al.*, *The Importance of Mentoring in the Development of Coaches and Athletes*, 29 INT'L J. OF SPORT PSYCHOL. 267 (1998)). Consequently, "[c]oaches often play the roles of dietician, physiologist, medical expert, counselor or psychologist, and present themselves as knowledgeable in these areas." Stirling *et al.*, *supra*, at 228. A coach's influence on a player is often so strong, for example, that they may "persuade an athlete to train or compete through an illness or injury or to advise the athlete to sacrifice social aspects of their life to meet training demands." *Ibid.*

To this end, many signatories to this brief have personally experienced the impact that coaches have had on varied aspects of their and other players' lives

off the field, including giving support to athletes when their parents were diagnosed with serious medical conditions; counseling athletes when their romantic relationships ended; and advising athletes about the repercussions of off-court behaviors (such as partying). Such experiences are unsurprising given that sports psychologists have observed that “coaches become very attached to their athletes and commit great emotional investments of care and concern for the welfare of their athletes.” Jowett *et al.*, *supra*, at 321 (quoting R.A. Vernacchia, *They used to call me coach: burnout and the career termination of coaches*, in *SPORTS PSYCHOLOGY: AN ANALYSIS OF ATHLETE BEHAVIOR* 361, 363 (K.P. Henschen & W.F. Straub eds., 3d ed. 1995)). These close relationships are forged from the sheer amount of time that athletes and coaches spend together. As Ms. Holden explains, “I spent so much time traveling with my coaches throughout the years, and so many hours practicing and competing with them, that there were times when I saw some of them more than some of my family.”

The fact that coaches’ spheres of influence extend beyond merely athletic matters makes the relationship susceptible to coaches using their position of influence to provide spiritual instruction and pastoral guidance. Indeed, researchers have found that “pre-game prayers are regularly held in public high school and university locker rooms” throughout the United States. Fried *et al.*, *supra*, at 302; Erin B. Edwards, Note, *College Athletics, Coercion, and the Establishment Clause: The Case of Clemson Football*, 106 VA. L. REV. 1533, 1535–36 (2020) (detailing that at Clemson University the

football team has a chaplain, a player was baptized on the football field in uniform after practice, and the chaplain organized trips to local churches during training camp).

While a student-athlete at Oklahoma State University, signatory Reverend Lori Walke relays:

My head coach gifted every player a Bible with the player's name engraved on the front. We were also "encouraged" to attend Fellowship of Christian Athletes meetings, a showing of Mel Gibson's *The Passion of the Christ* (the theater had been rented for a private viewing of the movie for all student-athletes), and attend church. I use quotes around the word encouraged because we knew that the coaching staff knew who showed up at what and often commented on it. My teammates and I knew if we didn't show up for something that was optional that it would be noted, and were left to wonder about the consequences.

Of course, that coaches influence players outside of athletic contests does not mean that coaches' off-duty conduct may always be regulated—only conduct that is engaged in as a coach, in an official capacity, is regulable. But given that a coach's sphere of influence may extend beyond the football field or other sports arena, coaches may feel they are uniquely positioned to offer pastoral or religious guidance to the children in their care. In the public

school setting, the First Amendment prohibits such conduct.

4. Players may feel compelled to participate in the prayers conducted by their coaches and teammates.

Considering the fact that coaches are authority figures that hold the keys to an athlete's success and that it is not unusual for coaches to provide guidance with respect to non-athletic issues, the coach-player relationship is particularly susceptible to being a breeding ground for powerful—if often subtle—religious coercion.

When coaches and other athletes engage in group prayer or other religious demonstrations, athletes may feel compelled to participate not only to appease their coach, but also because they may feel the social pressure from their teammates to participate. As researchers have recognized, coaches and athletes may use prayer for numerous reasons, including “establish[ing] a strong bond of attachment between teammates.” Daniel R. Czech *et al.*, *The experience of Christian prayer in sport: An existential phenomenological investigation*, 23 *J. OF PSYCHOL. & CHRISTIANITY* 3, 3 (2004) (citing J.J. Coakley, *SPORT IN SOC'Y* (2001)); Melissa A. Murray *et al.*, *The Relationship between Prayer and Team Cohesion in Collegiate Softball Teams*, 24 *J. OF PSYCHOL. & CHRISTIANITY* 223, 223 (2005) (recognizing that “athletes considered pre-game prayer to be a way coaches facilitated and maintained team cohesion” and that “[a]thletes believed praying as a team was an action that connected all the other team-building

efforts.”) (citing P.D. Turman, *Coaches and cohesion: The impact of coaching techniques on team cohesion in the small group sport setting*, 26 J. OF SPORT BEHAVIOR 86 (2003)).

Consequently, teammates may view a player’s non-participation in team prayer as “an indication of a lack of willingness to cooperate with other athletes on the field.” Fried *et al.*, *supra*, at 313. As signatory Toni Smith-Thompson notes, “College was the first time I experienced team prayers imposed before games. It was uncomfortable but the coach was new and I did not want to harm my new relationship with her and I did not want to have to be separate from my team during important bonding moments. There was a feeling that disparaging or disagreeing with the coach’s rituals could impact my standing on the team, playing time, and my overall experience of being part of a team.”

A prominent example of the social pressure athletes that do not wish to participate in the religious conduct of their coaches and teammates feel comes from former NFL player Arian Foster. While on the football team at the University of Tennessee, Mr. Foster experienced first-hand the repercussions of not participating in religious activities with his teammates. When Mr. Foster asked to be excused from participating in such religious activities, he was labelled as “arrogant, selfish, difficult to coach,” viewed as “being a rebel,” and thought not to “want to participate in the team activities.” Tim Keown, *The Confession of Arian Foster*, ESPN THE MAGAZINE (Aug. 6, 2015), www.espn.com/nfl/story/_/id/

13369076/houston-texans-arian-foster-goes-public-not-believing-god. While Mr. Foster nonetheless resisted this pressure, not all players may have the courage—or feel that they have the ability—to refuse to participate in such religious activities. As signatory James Perry explains, “if your teammates and coach(es) gather at the center of the field, you will gather at the center of the field. If a coach or other adult (or even a teammate) offers up a prayer, at the very least you will bow your head as a show of respect. I cannot imagine a player staying on the sidelines while this takes place.”

Players, therefore, may participate despite deep qualms, either out of a sense of obligation or for fear of repercussions (imagined or otherwise). See Murray, *supra*, at 238 (in a study of NCAA Division I softball players, researchers encountered athletes that participated in team prayers “only to be a part of the team”); Fried *et al.*, *supra*, at 301 (“Athletes often participate in [religious] pregame rituals out of habit or a sense of team unity.”). To this end, former NFL player and signatory to this brief, Chris Kluwe, notes that coaches often tout football teams as a “family”; therefore, if a player were to walk away from the team during a moment of prayer, Mr. Kluwe notes you are likely viewed as “walking away from your family” and “refusing to be a part of the family.”

B. Mr. Kennedy’s Prayers Were Coercive.

In the case before the Court, numerous aspects of the record would have led players to feel compelled to participate in Mr. Kennedy’s post-game prayers, even if, as Mr. Kennedy has asserted, that was not his

intention. *Cf.* J.A. 169 (declaration of Mr. Kennedy dated Aug. 23, 2016) (hereinafter “Kennedy Decl.”) (attesting that he is “not motivated to pray after football games in order to push my religious beliefs on BHS players, coaches, or anyone else.”).

Among other facts demonstrating the coercive nature of this situation, a few stand out:

- “Over time, the number of players who gathered near [Mr. Kennedy] after the game [to pray] grew to include the majority of the team,” J.A. 169 (Kennedy Decl.);
- The team captain (or other players of the football team) would invite other players to participate in Mr. Kennedy’s prayers, J.A. 268–69 (deposition of Mr. Kennedy dated Aug. 9, 2019); and
- Mr. Kennedy’s prayers would often be accompanied by “short motivational speeches to the players,” J.A. 170 (Kennedy Decl.); J.A. 126 (Mr. Kennedy’s EEOC Questionnaire) (stating that since 2009 he gave a “short motivational speech prior to some of my post-game prayers”).

The fact that the majority of the team often participated in Mr. Kennedy’s prayers—and that the captain or other players would invite players to participate in such prayers—increases the likelihood that players would feel compelled to join, and participate in, Mr. Kennedy’s prayers. This is because the period of late adolescence is “marked by increased sensitivity to peer influence and increased drive for

peer approval,” and “[a]dolescents are strongly motivated to acquire social status within their peer-groups, which is often attained by mimicking or adhering to the prototypical behaviors of others within the group who have high status.” See Scott A. Graupensperger *et al.*, *Everyone Else Is Doing It: The Association Between Social Identity and Susceptibility to Peer Influence in NCAA Athletes*, 40 J. OF SPORT & EXERCISE PSYCHOL. 117, 117 (2018); see also *Lee*, 505 U.S. at 593 (recognizing that high school peer “pressure, though subtle and indirect, can be as real as any overt compulsion”). Moreover, the fact that Mr. Kennedy would often accompany his post-game prayers with a motivational speech means that a player who wanted to avoid being associated with Mr. Kennedy’s prayers would also miss out on the benefit of any post-game motivational speech. A student-athlete’s natural desire to hear the latter could lead them to participate, even if unwillingly, in the former.

The fears and dangers of coercion and compulsion by Mr. Kennedy’s prayers are not speculative; indeed, the record before the Court demonstrates that players were put in a position of having to choose between participating in Mr. Kennedy’s prayers or, alternatively, following their conscience and risking alienation from the team. Parents at Bremerton High School, for example, described that Mr. Kennedy’s prayers “had put * * * their children in awkward situations where they did not feel comfortable declining to join with the other players in Mr. Kennedy’s prayers.” See J.A. 359; see also J.A. 356 (“[C]hildren had participated in the team prayers only

because they did not wish to separate themselves from the team.”).

As this Court has recognized, “[t]he government may no more use social pressure to enforce orthodoxy than it may use more direct means.” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000) (quoting *Lee*, 505 U.S. at 594); see also *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d 153, 183 (3d Cir. 2008) (McKee, J., concurring) (“Any player who held opposing beliefs should not have had to ‘go along to get along’ by silently participating in religious observances he disagreed with.”). Accordingly, the fact that Mr. Kennedy did not *require* players to participate is not dispositive; instead, the School District reasonably sought to prevent this inherently coercive conduct from continuing. The Establishment Clause ensures that, in the public school setting, children do not have to choose between feeling obliged to appease their coach and teammates on the one hand, and following the dictates of their conscience on the other.

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted.

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