

## 21-418 KENNEDY V. BREMERTON SCHOOL DISTRICT

DECISION BELOW: 991 F.3d 1004

LOWER COURT CASE NUMBER: 20-35222

### QUESTION PRESENTED:

Petitioner Joseph Kennedy lost his job as a football coach at a public high school because he knelt and said a quiet prayer by himself at midfield after the game ended. After considering an interlocutory petition in which Kennedy sought review of the lower courts' refusal to grant him a preliminary injunction, four members of this Court observed that "the Ninth Circuit's understanding of the free speech rights of public school teachers is troubling and may justify review in the future," but concluded that this Court should stay its hand until the lower courts definitively determined the reason for Kennedy's termination. The statement also noted that Kennedy had a then unaddressed claim under the Free Exercise Clause.

On remand, the lower courts found-and the school district ultimately agreed-that Kennedy lost his job solely because of his religious expression. Yet the Ninth Circuit nevertheless ruled against him again. The court not only doubled down on its "troubling" free-speech reasoning, which transforms virtually all speech by public-school employees into government speech lacking any First Amendment protection, but reached the remarkable conclusion that, even if Kennedy's prayer was private expression protected by the Free Speech and Free Exercise Clauses (which it undoubtedly was), the Establishment Clause nevertheless required its suppression. The court denied *en banc* review over the objection of 11 judges.

The questions presented are:

1. Whether a public-school employee who says a brief, quiet prayer by himself while at school and visible to students is engaged in government speech that lacks any First Amendment protection.

2. Whether, assuming that such religious expression is private and protected by the Free Speech and Free Exercise Clauses, the Establishment Clause nevertheless compels public schools to prohibit it.

CERT. GRANTED 1/14/2022