No. 16-35801

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

OCTOBER 2018

**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 FOR RESPONDENT**

**­­­­­­­**

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**Oral Argument Requested**

**QUESTION PRESENTED FOR REVIEW**

The question presented for review is whether public-school teachers and coaches, acting in their official capacity and in the general presence of students, retain all their First Amendment rights.

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**OPINIONS BELOW**

The United States District Court denied the Petitioners’ motion for a preliminary injunction. R. at 39. The Ninth Circuit Court of Appeals affirmed the District Court’s denial of the preliminary injunction. *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813, 832(9th Cir. 2017).

**STATEMENT OF JURISDICTION**

The statement of jurisdiction required by United States Supreme Court Rule 24.1(e) has been waived pursuant to Dean Fred F. Herzog Moot Court Competition Rule 2(a)(1).

**STANDARD OF REVIEW**

The issue presented addresses applicability of the standard of First Amendment rights for a public employee to public school teachers and coaches in the presence of students. Since the applicability of precedent is a question of law, this court reviews *de novo.*

**STATUTORY PROVISIONS**

Addressing this matter requires the application of 42 USCS §1983 and U.S. Const. amend. I. The text of these provisions are attached in appendix A.

**STATEMENT OF THE CASE**

1. **STATEMENT OF THE FACTS**

Immediately after shaking the other team’s hands, the assistant football coach and petitioner Joseph Kennedy knelt at the fifty-yard line and in full view of everyone around him and he prayed. R. at 102. Representing the public school and in the scope of his employment, Kennedy prayed in front of spectators, not only belonging to his faith, but belonging to a wide variety of faiths and backgrounds. R. at 102.

**Duties of an Assistant Coach**

From 2008 to 2015, Kennedy worked as a football coach for Bremerton High School. R. at 74. Not only was he the head coach of the JV team, but he was also an assistant coach of the varsity team. R. at 74. The respondent, Bremerton School District, entrusted him to not only to nurture the athletes but to represent the school as an assistant coach before the students and public by following the rules of conduct. R. at 132. Part of those rules of conduct was the new policy that a coach cannot encourage or discourage a student from engaging in any form of devotional activity. R. at 29.

The school district notified Kennedy of this new policy, and Kennedy received a letter on September 17, 2015 clarifying what the school expected from him. R. at 101. That letter clarified to Kennedy that the school’s staff, including Kennedy, cannot encourage or discourage any student religious activity. R. at 29. Kennedy was even advised to keep his religious activity free from any student activity. R. at 29. Kennedy could only engage in religious activity during a student activity if and only if it is non-demonstrative. R. at 29. Moreover, the scope of employment for an assistant coach only end until after the students have been released to their parents. R. at 132. Accordingly, Kennedy acts in his official capacity until the football players are released to their parents after the game. R. at 132.

**Kennedy’s First Refusal to Comply**

After complying with these rules for weeks, Kennedy’s attorney sent a letter to the school requesting for an exemption on October 14, 2015. R. at 36. He requested for a religious accommodation that would allow him to pray at the fifty-yard line following the completion of the football games. R. at 36. Kennedy believed that once the game was over he no longer acted in his official capacity and that during his prayers he did not explicitly refer to one religion. R. at 38. At the conclusion of this letter, Kennedy noted that on October 16, 2015 he intended to kneel down at the fifty-yard line after the game and pray. R. at 41.

Determined, on October 16, 2015, Kennedy shook hands with the other team following the game. R. at 77. He waited, watching the player make their way to the fans to sing the schools fight song. R. at 77. And, in full view of all those fans, Kennedy walked to the fifty-yard line. R. at 77. He knelt, and he prayed. Players, coaches, spectators came and joined him in his prayer in view of everyone else around them. R. at 77.

**The Aftermath of Kennedy’s Acts**

Following this display of faith, others came to the school requesting to display their own faith following the football games. R. at 151. Members of the Satanist wanted to conduct ceremonies on the football field after the games. R. at 151. In the past, the school allowed people access to the field following the game, but this became too much. So, following Kennedy’s acts, the school arranged for the police to secure the field. R. at 151. The school even sent a letter on October 23, 2015 stating that Kennedy failed to comply with the school’s religious policies, but this was not enough to cool Kennedy’s religious beliefs. R. at 43. That day, October 23, 2015, Kennedy again knelt and prayed at the fifty-yard line, and he prayed again on October 26, 2015. R. at 145. It became too much, and the school placed him on administrative leave. R. at 47.

However, yet again, Kennedy, not acting as the coach, again knelt down wearing his school apparel on October 30, 2015, and he prayed. R. at 124, 151. Following this 2015 season, the athletic director of the school recommended that Kennedy not be rehired for he had failed to supervise student-athletes after the games. R. at 78.

1. **STATEMENT OF PROCEDURAL HISTORY**

Following his termination, Kennedy filed suit against Bremerton School District. R. at 4. He filed this suit in the Western District of Washington on August 9, 2016. R. at 4. He claimed that the school district had retaliated against him for conducting his free speech and his freedom to express his religion. R. at 16. Accordingly, Kennedy motioned for a preliminary injunction. R. at 69. Kennedy wanted to be reinstated as a football coach at the school. R. at 73. He wanted the school district to stop discriminating against him, and he wanted to be allowed to pray after the game on the fifty-yard line. R. at 73. Accordingly, the school district opposed this motion for a preliminary injunction. R. at 118-56.

The district court denied Kennedy’s preliminary injunction. R. at 200. The court found that Kennedy did not speak as a private citizen but rather as a public employee. R. at 200. In doing so, the court found Kennedy subtly coerced the students into prayer, because the athletes wanted to please their coach. R. at 200. Additionally, the court found a reasonable observer would see Kennedy leading a prayer. R. at 200. Accordingly, Kennedy sought appeal to the Ninth Circuit Court of Appeals. R. at 202.

The Ninth Circuit upheld the district court’s ruling. *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813, 832 (9th Cir. 2017). The Ninth circuit found that Kennedy spoke as a public employee when he knelt and prayed after the games, because he his duty as a coach did not end till the players were released to their parents. *Id.* at 825. Accordingly, this court granted certiorari to determine whether public school teachers and coaches have all their First Amendment right when they act in their official capacity in the presence of students. R. at 204.

**SUMMARY OF THE ARGUMENT**

The respondents, Bremerton School District, respectfully ask this Court to affirm the Ninth Circuit Court of Appeal’s denial of petitioners’ motion for preliminary injunction, for Bremerton School District has shown public employee’s do not retain all their First Amendment rights and their rights are subject to restrictions by their employer. This court should find that public employee’s First Amendment rights may be constitutionally restricted, and thusly defeats a First Amendment retaliatory termination claim for the following three reasons.

First, this court held that public employee’s speech may be restricted, provided the speech does not comment on public concern and the speech has the tendency to affect the public employer’s operations. However, speech conducted by a public employee as a citizen is protected. Additionally, private expressions by a public employee are protected. Accordingly, because public employees represent the public employer, the public employer may restrict public speech conducted by the employee.

Second, a public employee’s demonstration of religion violates the establishment clause. The public employers are prohibited from establishing religion. Consequently, as the public employees represent the public entity, a public employee’s display of religion reflects the public entity’s establishment of the religion. Accordingly, the public entity may restrict the employee’s religious speech to avoid establishing religion.

Third, the public employer’s interest in efficiently serving the public and the public employee’s interest in expressing themselves must be weighed. The public employer has a compelling interest in avoiding establishing religion. Accordingly, the public employer’s interest outweighs the employee’s interest in expressing religion. Thus, this court should affirm

the Ninth circuit and hold that public-school teachers and coaches do not retain all their First Amendment rights in the presence of students.

**ARGUMENT**

This court should affirm the Ninth Circuit Court of Appeals’ holding, because the Ninth Circuit correctly held that a public employee, a public-school teacher or coach, rights pursuant to the First Amendment can be limited by their employer provided the speech is not on matters of public concern and the employee’s religious expressions violate the Establishment Clause. Accordingly, the Ninth Circuit was correct because the school district’s interest substantially outweighed the interest of Kennedy.

1. **The Ninth Circuit Correctly Held That Public Employees Including Public School Teachers And Coaches Do Not Retain All Their First Amendment Rights Including The Freedom Of Speech Because The Employee Is The Proxy For The Public Entity And As An Employer The Public Entity May Restrict The Employees Speech.**
2. **Public Employees Do No Retain The Freedom To Speak Publicly On Matters That Affect The Efficiency Of The Employer’s Operations, And The Public Emplyer May Place Restrictions On Such Speech.**

The Government and their entities are prohibited from regulating a citizen’s freedom of speech. USCS Const. Amend. 1. Accordingly, citizens possess the freedom of speech. USCS Const. Amend 1. Consequently, pursuant to 42 U.S.C. § 1983, government officials including employees in the position of power at a public school can be held accountable for depriving a citizen of the right to free speech. 42 U.S.C. § 1983. However, a public employee’s right to free speech is not absolute and may be subject to restrictions. *Garcetti v. Ceballos*, 547 U.S. 410,

418 (2006). “When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.” *Id.*

A public entity may restrict an employee’s speech provided the restriction is directed at employee speech that has the tendency to distress the public entities operations. *Id.* The court in *Connick v. Myer* found that the public employee’s speech was not protected because it affected the operations of the employer and that the employer rightfully terminated his employment in response. *Connick v. Myer*, 461 U.S. 138, 151-152 (1983). The employee refused to fill out a questionnaire provided to him by his employer. *Id.* Although, citizens have the right to refrain from speech, the court found this refrain was not concerning public concerns and hindered the employer’s operations. *Id.*, U.S. Const. Amend. I. The court recognized the importance of the public employer operating efficiently. *Connick v. Myer*, 461 U.S. 138, 146. To efficiently manage their operations, the public employer may restrict speech. *Id.* Accordingly, the court found the public employer rightfully terminated the employee for insubordination. *Connick*, 461 U.S. at 152. However, public employees retain protection when the employee’s public speaking concerns matters of public concern. *Pickering v. Bd. Of Educ.*, 391 U.S. 563, 573 (1968)

1. **Public Employees Retain The Freedom To Speak Publicly On Matters Of Public Concern, And The Public Employer, In Most Cases May Not Place Restrictions On Such Speech.**

The court in *Pickering* determined that public entities in most cases cannot regulate an employee’s speech targeted at public concern. *Id.* (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)). “The problem…is to arrive at a balance between the interests of the teacher, as a citizen, [commenting on public concern] and the interest of the State, as an employer, in promoting the efficiency of the public services it preforms through its employees.” *Id.* at 568. Accordingly, a test has been developed to determine whether an employer acted in accord with the Constitution when they restricted such speech. *Id.* at 573. The court examined the content of the employee’s speech to determine if it communicated a matter of public concern. *Id.* at 575. If the employee comments on matters of public concern, the public employer cannot restrict that speech in most cases. *Id.* at 573. For example, the court in *Pickering* weighed these interests and determined that the employee’s speech was aimed at public concern and the public employer could not terminate the employee for his speech. *Id.* at 575-76. Accordingly, the teacher-employee composed a letter indicating his opinion on the School Board’s, his employer, handling of funds, and the court found speech such as this constitutes speech targeted at public concern. *Id.* at 566, 570. Speech on matters of public concern “is more than [just] self-expression, it is the essence of self-government.” *Connick v. Myer*, 461 U.S. 138, 145. “Speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Id.* Accordingly, this employee’s speech was protected by the First Amendment. *Pickering*, 391 U.S. 563, 575.Subsequently, this test has been further defined in cases that have followed *Pickering*. *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009).

The court in *Eng* dissected the *Pickering* test and further clarified it by developing a five-part analysis to determine if a public employee can file suit for their deprivation of free speech pursuant to 42 U.S.C. § 1983. *Id.* The court must analyze the employee’s speech and determine 1) whether the speech was on matters of public concern, 2) whether the individual spoke as a private citizen or public employee, 3) whether the speech was the motivating factor for the adverse action, 4) whether the public employer had an adequate reason for doing so, and 5) whether the public employer would have acted the same regardless. *Id.* For example, the court in *Eng* found the public employer deprived the employee of his right to speech. *Id.* at 1072. The court found the employee spoke on matters of public concern, when he leaked a legal violation concerning the school district’s funding. *Id.* at 1073. Additionally, the court found the employee did so as a private citizen, and his speech was the motivating factor for his termination. *Id.* Additionally, courts have found public employees retain the freedom of speech, when it is a private expression and the employee is not expressing private concerns to the public. *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410, 415-16 (1979).

1. **Public Employees Retain The Freedom To Speak Privately To Their Employer On Matters That Promote Efficient Operations, And The Public Employer Cannot Place Restrictions On Private Expression.**

The court in *Givhan* determined that when a public employee speaks publicly, the content of their speech must be analyzed to determine if it concerns matters of public concern. *Id. footnote* 3. However, the court found that the Constitution protects speech that is privately expressed to employers. *Id.* at 415-16. Accordingly, when the public employee voiced her concerns about her employer’s policies in private, the court found this speech was protected and the employer retaliated against this right by not rehiring the employee. *Id.* at 411-13, 415-16.

Additionally, the court in *Connick* noted that the First Amendment protects public employee’s speech when the employee speaks privately with his or her employer. *Connick v. Myers*, 461 U.S. 138, 146. Accordingly, “private dissemination of information and ideas can be as important to effective self-governance as public speeches.” *Azzaro v. County of Allegheny*, 110 F.3d 968, 987 (3d Cir. 1997). The court in *Azzaro* found the employee’s private communication to her employer concerning work place sexual harassment was a private expression of public concerns. *Id.* at 979. Accordingly, the court found this expression allowed for a more effective evaluation of the public official’s performance and a more efficient work place. *Id.* at 978. Consequently, the court determined that the employee could not be fired based on this speech. *Id.* at 981.

1. **THE NINTH CIRCUIT CORRECTLY HELD THAT PUBLIC EMPLOYEES INCLUDING SCHOOL TEACHERS AND COACHES DO NOT RETAIN ALL THEIR FIRST AMENDMENT RIGHTS INCLUDING THE FREEDOM TO PUBLICLY PRACTICE RELIGION BECAUSE THE PUBLIC ENTITY’S DEMONSTRATION OF RELIGION VIOLATES THE ESTABLISHMENT CLAUSE.**
2. **Public Employers Are Prohibited From Creating Regulations That Either Promote Religion Or Disapprove Of Religion.**

The Government and their entities are prohibited from regulating a citizen’s freedom of religion. USCS Const. Amend. 1. Accordingly, citizens possess the freedom of religion, and consequently, pursuant to 42 U.S.C.S. § 1983, government officials including employees in the position of power at a public school can be held accountable for depriving a citizen of the right to express religion. 42 U.S.C.S. § 1983. Additionally, the public entity is prohibited from establishing a favorite religion or from disfavoring a religion. USCS Const. Amend. 1.

For example, the court in *Edwards v. Aguillard* found the state law established religion and violated the First Amendment, when the law prohibited teaching evolution in public elementary and secondary schools unless it was accompanied by creation science. *Edwards v. Aguillard*, 482 U.S. 578, 581 (1987). Accordingly, the court found this law protected those that believed in creation science but failed to protect those who believed in evolution. *Id.* at 588. Consequently, this law discredits evolution, and the state violated the Constitution by establishing religion. *Id.* at 589. Additionally, public entities cannot coerce an individual to practice a particular religion. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000).

The court in *Santa Fe Indep. Sch. Dist.* stated that the Establishment Clause places limitations on public entities and that it surpasses the accommodation of freely exercising religion. *Id.* For example, the court in *Santa Fe Indep. Sch. Dist.* found the school district’s policy of student lead prayer before football games violated the Constitution, because it coerced others to participate. *Id.* at 294, 317. Accordingly, a test has been developed to determine if a public entity has violated the Establishment Clause. *Doe v. Duncanville*, 70 F.3d 402, 405 (5th Cir. 1995).

The court in *Doe* utilized the Lemon test to determine if a public entity has violated the Establishment Clause. *Id.* The Lemon Test provides that the public entity’s practice must 1) have a secular purpose, 2) neither promotes or discourages religion, and 3) does not entangle the public entity in religion. *Id.* Accordingly, the court in *Doe* found the school district’s policy of praying before the girls’ basketball games failed the Lemon test, because it promotes religion and entangles the district in religion. *Id.* at 406. Moreover, the court noted that “a teacher’s [religious] speech can be taken as a directly and deliberately representative of the school.” *Id.* (citing *Bishop v. Aronov*, 926 F.2d 1066, 1073 (11th Cir. 1991)). Additionally, the court noted the school district can prevent their employees from participating in student prayer without violating the employees’ First Amendment rights. *Id.*

1. **Public Employers May Restrict Their Employees From Participating In Prayer And Not Be In Violation Of The First Amendment, But The Restriction Must Meet The Lemon Test.**

The public entity’s interest in not violating the Establishment Clause may be a compelling enough reason to restrict an employee’s free speech. *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994). For example, the court in *Peloza* found the school district rightfully restricted their employee’s speech about his religious beliefs. *Id.* The court found the employee’s speech about his religious beliefs violated the Lemon test that it promoted religion and entangled the school district in religion. *Id.* Consequently, the employee’s advocacy for his religious beliefs violated the Constitution. Additionally, the court noted “the school district’s interest in avoiding an Establishment Clause violation trumps [the employee’s] right to free speech.” *Id.*

However, the public entity’s restriction on the employee’s religious speech must meet the three-part Lemon Test. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 961 (9th Cir. 2011).

1. **Public Employers May Constitutionally Restrict An Employee’s Religious Speech Provided The Restriction Meets Both The Eng Test And The Lemon Test.**

Additionally, the Pickering Test and Eng test apply to expressions of religion for public employees. *Id.* Accordingly, the court in *Johnson* determined the employee spoke on matters of public concern, when he displayed religious banners in his classroom. *Id.* The court noted that “speech concerning religion is unquestionably an inherent public concern.” *Id.* at 966. However, the court found the employee spoke as an employee and not as a citizen. *Id.* at 970. Accordingly, the court found that the public employer could restrict the employee’s speech, because the employee was representing the employer. *Id.*

Moreover, the court in *Johnson* found the school district’s demand of the religious banners be taken down does not violate the Establishment Clause. *Id.* at 972. The Constitution requires the Government and its entities to be religious neutrality, and the court applied the Lemon Test to determine if this demand was such. *Id.* at 971-72. Accordingly, the court found there was no violation of the Lemon test, because avoiding an Establishment Clause violation is a valid secular purpose. *Id.* at 972. The court noted that “families entrust public schools [to teach their children,] but condition their trust on the understanding the classroom will not be purposefully used to advance religious views.” *Id.* (citing *Edwards v. Aguillard*,482 U.S. 578, 583-84 (1987)). Additionally, actions taken to avoid a violation of the Establishment Clause neither advance or prohibit religion and they disentangle the public employer from religion. *Id.* Accordingly, the court found the school district’s demand was secular, did not advance or prohibit religion, and disentangled them from religion. *Id.*

1. **THE NINTH CIRCUIT CORRECTLY HELD THAT PUBLIC EMPLOYEES DO NOT RETAIN ALL THEIR FIRST AMENDMENT RIGHTS BECAUSE THE PUBLIC ENTITY HAS A COMPELLING INTEREST TO REMAIN NEUTRAL AND REFRAIN FROM DEMONSTRATING A RELIGION.**

As noted above, “the school district’s interest in avoiding an Establishment Clause violation trumps [the employee’s] right to free speech.” *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d at 522. Both the interest of the public entity in avoiding a violation of the Establishment Clause and the interest in the employee expressing their religious belief must be weighed. *Id.*

1. **A Citizen Has The Fundamental Right To Free Speech And Free Expression Of Religion, However, As A Public Employee There Are Limitations.**

As noted above, the First Amendment prohibit the government and its entities from restricting an individual’s speech or religion. USCS Const. Amend. 1. Additionally, special protection is given to an individual or public employee’s speech that is directed at matters of public concern. *Connick v. Myer*, 461 U.S. at 145. Moreover, as the court in *Johnson* noted, religious speech is inherently on matters of public concern. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d at 966. Accordingly, public employees have a profound interest in religious speech. *See Id.*, 461 U.S. at 145.

Additionally, according to the Eng Test, this speech cannot be curtailed by the public employee. *Eng v. Cooley*, 552 F.3d 1062, 1072. This speech is protected by the First Amendment, and the speaker has a fundamental interest in expressing their religion. *See Pickering v. Bd. Of Educ.*, 391 U.S. at 575. However, upon employment, public employees recognize and accept limitations on this freedom. *Garcetti v. Ceballos*, 547 U.S. at 418. Moreover, public employers also have a profound interest. *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d at 522. They have a profound interest in avoiding any violation of the Establishment clause. *Id.*

1. **A Public Entity Has A Profound Interest In Avoiding Any Violation Of The Establishment Clause.**

Government entities are prohibited from encouraging or disapproving religion. USCS Const. Amend 1. Moreover, the government entity must remain neutral on such matters. *Johnson v.Poway Unified Sch. Dist.*, 658 F.3d at 971-72. Accordingly, government entity’s policies must remain secular and void of religion. *Doe v. Duncanville*, 70 F.3d at 405. Moreover, these policies must not either promote or discourage religion. *Id.* Furthermore, these policies must not entangle the government entity in religion. *Id.* Therefore, the government entity, including the school district, has a profound interest in remaining neutral on the subject matter of religion. 37 F.3d at 522.

1. **The Public Entity’s Interest In Avoiding An Establishment Clause Violation Outweighs The Employee’s Interest In Their Freedom To Express Their Religion.**

The courts must come to a balance between the public employee’s interest in communicating their religion and the interest of the government entity remaining neutral on the subject of religion. 391 U.S. at 568. Accordingly, “the [government entity’s] interest in avoiding an Establishment Clause trumps [the employee’s] right to [expressing religion].” 37 F.3d at 522. The Constitution requires the public employer to remain neutral restricting their employee’s religious speech promotes that end. 658 F.3d at 971-72. Restricting employee’s religious expression has a secular purpose. *Id.* It does not promote or discourage religion. *Id.* And, it disentangles the public employer from religion. *Id.* Accordingly, a public employer’s restriction on their employee’s expression of religion is constitutional and valid. *Id.*

**CONCLUSION**

The Ninth Circuit Court of Appeal’s holding that public school teachers and coaches do not retain all their First Amendment rights should be affirmed of the reasons stated above. This court has previously that a public employee’s speech may be limited. 547 U.S. at 418. Public employers may subject their employees to limitations in order to efficiently manage and maintain their public service operations. 461 U.S. at 146. Moreover, public employee’s still retain some of their First Amendment rights. 391 U.S. at 575. Accordingly, the public employer cannot place limits on the employee’s speech that targets matters of public concern, both made publicly and privately to their employer. *Id.*, 439 U.S. at 415-16.

Additionally, public employers are prohibited from promoting or discouraging religion. USCS Const. Amend. 1. Accordingly, the public employers must remain neutral on the subject of religion. 658 F.3d at 971-72. Prohibiting an employee’s expression of religion does just that. *Id.* The public employer, in doing so, has a secular purpose, it does not promote or discourage religion, and it disentangles them from religion. *Id.* Moreover, the public employer’s interest in avoiding a violation of the Establishment Clause surpasses the employee’s interest in expressing their religion. 37 F.3d at 522.

The employee’s interest in expressing religion is a matter of public concern, and it deserves special protection. 461 U.S. at 145. The employee, pursuant to the Eng Test, is free to communicate these religious belief without the employer placing limits on the expression. 552 F.3d at 1072. However, pursuant to USCS Const. Amend. 1. and the Lemon Test, the public employer must curtail this expression, because it promotes while discouraging other religions and it entangles the public employer in religion. 658 F.3d at 971-72. Accordingly, the public employer’s interest in remaining neutral surpasses the employee’s interest in expressing their religion, and the employee does not retain all their First Amendment Rights. 37 F.3d at 522.

For the forgoing reasons, the Ninth Circuit Court of Appeal’s holding that public school teachers and coaches do not retain all their First Amendment rights should be affirmed.

**APPENDIX B**

1. **STATUTORY PROVISIONS**

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C.S. § 1983.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.