**No. 16-35801**

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

Fall 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**

194R

*Counsel for Respondent*

**Oral Argument Requested**

**QUESTION PRESENTED**

1. Whether Joseph Kennedy, as a public high school coach, retained protection under the First Amendment when he was acting under his official capacity as a public employee when he kneeled to pray and gave religious speeches immediately after a football game in the middle of the field while in the general presence of students and parents.

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**OPINIONS AND ORDERS BELOW**

The opinions and orders of the United States District Court for the Western District of Washington for *Kennedy v. Bremerton Sch. Dist.*, is reported at No. 3:15-cv-05694-RBL, 2017 U.S. App. LEXIS 16106 (D. Washington September 19, 2016). The opinion for the United States Court of Appeals for the Ninth Circuit is reported at *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813 (9th Cir. 2017), at 2017 U.S. App. LEXIS 16106 (9th Cir. 2017), at 2017 WL 3613343 (9th Cir. 2017). The Supreme Court of the United States granted certiorari on 09/05/2018 (R. 204).

**JURISDICTIONAL STATEMENT**

 Pursuant to Rule 2(a) of the Dean Fred F. Herzog Moot Court Competition, the Jurisdictional Statement has been waived.

**CONSTITUTIONAL AND STATUTORY PROVISIONS**

The adjudication of this case involves the application of Title VII of the Civil Rights Act of 1964 within 42 U.S.C. § 2000e-2(a) (2018), the First Amendment of the United States Constitution and 42 U.S.C. § 1983 (1996). The relevant text of these provisions is below.

**42 U.S.C. § 2000e-2 (2018): Unlawful employment practices**

(a) Employer practices. It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

**USCS Const. Amend. I.**

 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.

**42 U.S.C. § 1983 (1996):** **Civil Action for Deprivation of Rights**

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.

**STATEMENT OF THE CASE**

1. **STATEMENT OF THE FACTS**

 The Respondent, Bremerton School District (“BSD”) employed Petitioner, Joseph Kennedy (“Kennedy”), as a football coach for eight years. R. 142. Kennedy was an assistant coach for BSD’s varsity football team, and the head coach for the junior varsity team. R. 142. BSD’s coaches, including Kennedy, are employed under one-year contracts. R. 142. Each contract contains BSD’s policies and procedures for which the coaches acknowledge and accept by signing. R. 142. In the 2015 season, Kennedy began to kneel to pray in the middle of the football field after every game. R. 143. Additionally, Kennedy was giving speeches that included religious references incorporating prayer at the 50-yard line directly following a football game. R. 143. By witnessing Kennedy partake in such activity, the students began joining him to form pray circles. R. 143. Further, Kennedy began inviting other schools’ football teams to join him and his students in post-game prayers. R. 143.

 BSD’s Board Policy 2340 restricted school staff from encouraging students to engage in devotional activity. R. 29. The above policy allowed students, by their own volition, to engage in private devotional activity. R. 29. However, the students did not engage in post-game prayer prior to witnessing Kennedy engage in such activity. R. 9. After Kennedy temporarily stopped this conduct, players stopped as well. R. 151. Kennedy’s mid-field prayers were not in private, as mandated by BSD’s policies. R. 29-30. Kennedy encouraged students to engage in a form of devotional activity. R. 29. Moreover, Kennedy encouraged public devotional activity. R. 29, 143. BSD’s superintendent, Aaron Leavell (“Leavell”), wrote a letter to Kennedy on September 17, 2015, to cease this violation of BSD’s policies. R. 49, 143. The September 17letter was aimed to notify Kennedy that his public devotional practices violated the First Amendment’s Establishment Clause. R. 51. BSD’s September 17 letter did not restrict Kennedy’s ability to perform motivational speeches with the students. R. 144. Instead, the letter sought to exclude the religious ideology within the speeches to comply with not only BSD’s policies, but the U.S. Constitution as well. R. 144.

 BSD informed Kennedy that he could engage in religious activity, such as prayer, as long as it did not interfere with BSD’s policies that Kennedy agreed to within his contract. R. 144. BSD’s policies stated that religious activity must be separate from any student activity, and students cannot join in such activity. R. 144. Despite BSD’s aforementioned letter, Kennedy continued to partake in praying at the 50-yard line immediately after a football game. R. 144. BSD followed up with yet another letter on October 23, 2015, to reiterate that Kennedy was violating BSD’s policies, which were aimed to avoid endorsing religion pursuant to the U.S. Constitution. R. 144. The October 23 letter also informed Kennedy that BSD would happily develop accommodations to help Kennedy comply with their policies and the law, while providing a place for Kennedy to engage in religious conduct. R. 144. BSD offered to find Kennedy a private place for religious activity that was separate from students or the public, before or after football games. R. 144. Kennedy ultimately denied such assistance. R. 144.

 Kennedy’s post-game religious conduct began to attract the attention of the media. R. 150. Following media attention, community members began to express concern regarding Kennedy’s conduct. R. 150. Shortly after Kennedy began praying in the middle of the field, large amounts of people came onto the field after the game to join. R. 150. People would jump the fence, and run among the cheerleaders, band and players. R. 150. Consequently, BSD began receiving complaints from parents of band members who were knocked to the ground when people began to rush onto the field to join Kennedy. R. 151.

 A mere three days following BSD’s October 23 letter, Kennedy kneeled on the field after the football game and began praying. R. 145. This was witnessed by both players and audience members. R. 145. On October 28, 2015, BSD sent another letter to Kennedy outlining Kennedy’s direct violation of BSD’s policies, the law and previous letters. R. 145. The October 28 letter continued to inform Kennedy that BSD remained willing to provide accommodations to Kennedy, so he could engage in private religious activity. R. 145. Again, Kennedy denied such efforts. R. 145. Kennedy was subsequently placed on paid administrative leave. R. 145. Thereafter, BSD’s athletic director, Jeff Barton (“Barton”), recommended Kennedy not be rehired based on his coaching evaluation form. R. 145. BSD stated that Kennedy failed to follow district policies and developed “negative relations between parents, students, community members, coaches, the school district.” R. 145. Despite BSD’s requests, Kennedy never came in to meet with Barton to go over his evaluation. R. 154. Although available, Kennedy never applied to BSD for the 2016 season coaching position. R. 155.

1. **COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW**

 Joseph A. Kennedy filed a complaint in the United States District Court for the Western District of Washington, Tacoma Division, alleging a violation of his First Amendment rights by Bremerton School District. R. 159. Specifically, Kennedy contends that BSD violated Kennedy’s demonstrative religious practices while he was still on duty as a coach by taking a knee to pray following a football game within the middle of the field. R. 159. Kennedy brought suit for a First Amendment retaliation claim against BSD and sought a preliminary injunction to: (i) cease discriminating against him in violation of the First Amendment, (ii) reinstate him as a BHS football coach, and (iii) allow him to kneel and pray on the fifty-yard line immediately after BHS football games. R. 18, 73.

 BSD moved to dismiss Kennedy’s complaint with prejudice, stating that Kennedy was not likely to succeed on the merits for his First Amendment claims. R. 175. The United States District Court for the Western District of Washington, Tacoma Division, denied Kennedy’s Motion for a Preliminary Injunction, holding that Kennedy was acting as a public employee and not a private citizen at the time of his religious conduct at issue. On Kennedy’s appeal, the United States Court of Appeals for the Ninth Circuit affirmed the District Court’s denial of Kennedy’s preliminary injunction, stating that Kennedy was acting as a public employee at the time of the religious conduct at issue, and thus, BSD was permitted to restrict him from engaging in such conduct. *Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813 (9th Cir. 2017).

 Kennedy petitioned for a writ of certiorari to the United States Supreme Court. This Court granted the petition to address the issue of whether public school teachers and coaches retain any First Amendment rights when at work and “in the general presence of” students.

**SUMMARY OF THE ARGUMENT**

 The issue in this case revolves around whether Joseph Kennedy, as a public high school coach, retained protection under the First Amendment when he was acting under his official capacity as a public employee when he began kneeling to pray and giving religious speeches immediately after a football game in the middle of the field in the general presence of students and parents. Respondent, Bremerton School District, respectfully requests this court affirm the holding of the Appellate Court that Kennedy did not possess protection under the First Amendment because he was acting as a public employee at the time of the speech at issue. Moreover, BSD was justified in restricting Kennedy’s speech to avoid a violation of the Establishment Clause within the First Amendment by being seen as endorsing a specific religion. Furthermore, Kennedy had ample opportunity to discuss viable accommodations that would avoid such a violation of the First Amendment, but refused accept the opportunities.

Kennedy, as a public employee, was also acting within the scope of his professional obligations at the time of the restricted speech. Additionally, Kennedy was at a school event whilst he conducted the improper speech in front of students and parents. Therefore, Kennedy, as a public employee who was acting within the scope of his professional obligations in front of students and parents, was properly restricted in kneeling and giving religious speeches directly after a football game while in the middle of the field.

**ARGUMENT**

1. **KENNEDY’S SPEECH WAS NOT CONSTITUTIONALLY PROTECTED**

The issue in this case revolves around whether Joseph Kennedy (“Kennedy”), as a public high school coach, retained protection under the First Amendment when he was acting under his official capacity as a public employee when he began kneeling to pray and giving religious speeches immediately after a football game in the middle of the field in the general presence of students and parents. Kennedy aforementioned conduct was not protected under the Constitution. Primarily, Kennedy was acting in his full capacity as a public employee of Bremerton School District (“BSD”). By praying in the general presence of students and parents, Kennedy was falsely eliciting that BSD endorsed a particular religion. Courts have frequently disapproved of school practices “that appear to endorse religion.” *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 405 (5th Cir. 1995). Further, Kennedy would engage in motivational talks both before and after the football games in which he incorporated devotional speech. Such public practices, while under BSD’s scope of employment, constituted violations of the First Amendment’s Establishment Clause. Moreover, BSD provided alternative options for Kennedy to practice his religious beliefs without violating the Establishment Clause. However, Kennedy refused and ignored BSD’s thoughtful accommodations, and continued to perform religious conduct in front of students and parents. Thus, Kennedy’s speech was not protected under the Constitution, and the Appellate Court’s decision should be affirmed.

1. **Kennedy Spoke As A Public Employee Rather Than A Private Citizen**

As a public employee, the Constitution supplies limited protection dependent on the surrounding circumstances. The Supreme Court properly held, “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). Kennedy’s speech occurred directly after a school-hosted football game in the middle of the field, while Kennedy was still under his “official duties.” Pursuant to Kennedy’s employment responsibilities within his contract with BSD, his employment responsibilities ended once all students and parents left the football stadium. Since Kennedy’s prayers occurred while students and parents remained within the stadium, and even on the field, Kennedy’s prayers were made “pursuant to his official duties.” “The First Amendment does not prohibit managerial discipline based on an employee's expressions made pursuant to official responsibilities.” *Id*. at 424. Additionally, the Ninth Circuit Court of Appeals held that due to school officials being in a “position of trust and authority they hold and the impressionable young minds with which they interact,” school officials act as public employees “when at a school or a school function, in the general presence of students, in a capacity one might reasonably view as official.” *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 968 (9th Cir. 2011). Kennedy met each element of the aforementioned test: (i) his prayers and devotional speeches occurred at a school during a school-hosted football game, (ii) in front of students and parents, (iii) while he was still within the scope of his contracted employment responsibilities as a coach for BSD. Therefore, Kennedy’s speech was not protected under the First Amendment.

1. **Kennedy Was In The General Presence Of Students And Parents**

It is undisputed that Kennedy’s prayers took place in the general presence of not only students, but parents as well. Supreme Court precedents have consistently opposed “school officials to assist in composing prayers as an incident to a formal exercise for their students.” *Lee v. Weisman*, 505 U.S. 577, 590 (1992). A strong possibility exists where some students view Kennedy’s Christian prayers as offensive or false ideology. A student might view a school official engaging in religious conduct as “inducing a participation they might otherwise reject.” *Id*. For this reason, Supreme Court precedents were put into place to protect students from potential inducement.

In *Lee*, a school district incorporated prayers and devotional language within its graduation ceremonies. *Id*. at 580. The Supreme Court held in favor of the student’s parent who argued that the school district’s incorporation of prayer during graduation ceremonies was not constitutionally protected speech and viewed it as inducing students to engage in such conduct. *Id.* at 583-85. Ultimately, the Court held that the devotional language and prayers placed “public pressure, as well as peer pressure, on attending students to stand as a group or, at least maintain respectful silence during the invocation and benediction.” *Id.* at 593. The Court viewed such pressure as “overt compulsion.” *Id*.

Kennedy’s speech bears an analogous relation to the devotional speech displayed in *Lee*. Primarily, since Kennedy performed his prayers in the general presence of students, a majority of the students subsequently began joining Kennedy to pray. Ultimately, this resulted in the formation of a prayer circle, with Kennedy as the center. This undoubtedly can be viewed as the same pressure to students whom did not follow such religious ideology. To avoid scrutiny or rejection from teammates, students were potentially pressured into joining Kennedy’s prayer circles. Schools are permitted to enjoin coaches from “initiating, leading, or supervising student prayer.” Doe, 70 F.3d at 405-06. Allowing public school officials to engage in prayer in the general presence of students carries “a particular risk of indirect coercion.” *Cty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 660-62 (1989). To avoid a coercive effect on students, Kennedy’s prayers in the general presence of students is not protected under the Constitution. In fact, protecting Kennedy’s speech would be a strict violation of past Supreme Court precedent and the Constitution’s First Amendment.

1. **Kennedy Spoke While Within The Scope Of His Professional Obligations As A Coach**

Kennedy performed is devotional speeches and prayers while within the scope of his professional obligations. To fulfill the second part of the test set out by *Johnson*, Kennedy was categorized as a public employee at the time of his speech at issue. *Johnson*, 658 F.3d at 968. Kennedy’s employment contract as a coach with BSD illustrated that Kennedy remained under his professional obligations until all students and parents were out of the football stadium. This rule was to ensure the safety of the students until they left school grounds. BSD had a policy that excluded anyone but members of the football team and staff to be able to enter the football field during or immediately after a game. As a coach, Kennedy had special access rights to BSD’s football field and was allowed on the field and sidelines. A school official acts within the scope of their professional obligations when they engage in speech during something that they are hired to do and would not be able to do if they were not a public school official. *Evans-Marshall v. Bd. of Educ. Of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332 (6th Cir. 2010). Here, Kennedy would not be able to engage in prayer in the middle of the football field immediately after a game if he was not acting as a coach. Therefore, Kennedy’s speech occurred while he was under his professional obligations as a public employee.

In *Mayer v. Monroe Cty. Cmty. Sch. Corp.*, 474 F.3d 477, 479 (7th Cir. 2006), the Court held that a teacher’s verbally expressed criticisms about the Iraq war were within the scope of her professional obligations because they occurred in the general presence of students during class hours. Further, the Court reasoned, “The Constitution does not entitle teachers to present personal views to captive audiences against the instructions of elected officials.” *Id*. at 480. Likewise, Kennedy spoke under his professional obligations as a public employee when he engaged in religious speech during his responsibilities as a coach.

“Teachers do not cease acting as teachers each time the bell rings or the conversation moves beyond the narrow topic of curricular instruction.” *Johnson*, 658 F.3d at 967-68. Applying congruent reasoning, Kennedy’s professional obligations did not end each time a football game concluded. Instead, his professional obligations ended after every student departed from the football stadium. “Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.” *Garcetti*, 547 U.S. at 421-22. As such, Kennedy’s restriction to cease from a public display of religious ideology that would constitute BSD’s endorsement of a particular religion did not infringe any of his liberties as a private citizen. “A teacher's in-class conduct is not protected speech. The rationale for this is that the teacher is acting as the educational institution's proxy during his or her in-class conduct, and the educational institution, not the individual teacher, has the final determination in how to teach the students.” *Borden v. Sch. Dist. of Twp. Of E. Brunswick*, 523 F.3d 153, 172 (3rd Cir. 2008).

Following the same logic, Kennedy’s speech during or immediately after a football game was not protected speech. Kennedy, as a coach, was acting on behalf of BSD because he was under BSD’s institutionally imposed obligations. As such, Kennedy’s speech while under his professional obligations as a coach was not protected under the First Amendment.

1. **Kennedy Cannot Engage In Speech That Would Constitute BSD’s Endorsement Of A Particular Religion**

Pursuant to the First Amendment’s Establishment Clause, “Congress shall make no law respecting an establishment of religion.” USCS Const. Amend. I. This clause forbids the government from establishing an official religion in addition to prohibiting government actions that unduly favor one religion over another. A public school, as a government funded and run facility, cannot endorse conduct that favors one religion over another. Kennedy strictly violated the Establishment Clause by engaging in religious conduct while acting as a public employee of BSD. Kennedy’s conduct was seen as BSD endorsing Christianity, as both students and parents witnessed such public events. “A teacher's speech can be taken as directly and deliberately representative of the school.” *Bishop v. Aronov*, 926 F.2d 1066, 1073 (11th Cir. 1991). To avoid violating the Establishment Clause, BSD was justified in enjoining Kennedy from engaging in such conduct.

1. **This Would Violate The First Amendment’s Establishment Clause**

To avoid a violation of the First Amendment’s Establishment Clause, BSD needed to restrict Kennedy’s speech. The Ninth Circuit Court of Appeals has consistently held that a public employer’s interests in avoiding a violation of the Establishment Clause, “outweigh the resulting limitations on [an employee’s] free exercise of his religion at work.” *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642 (9th Cir. 2006). The Establishment Clause protects “the free exercise thereof,” but imposes limits to avoid a public endorsement of a particular religion. USCS Const. Amend. I. Kennedy went beyond those limits imposed by the First Amendment by publicly taking a knee to pray in the center of a football field while acting as a public employee, in front of students and parents. “If a school official is engaging in student prayer to the extent that they are leading it, initiating it, or requiring it, the school official, and thus the school district, is violating the Establishment Clause.” *Borden*, 523 F.3d at 166. The enforcement of the Establishment Clause outweighs Kennedy’s right to perform religious conduct in a way that would lead a reasonable person to believe that the government is endorsing a particular religion. *Cty. of Allegheny*, 492 U.S. at 596. A reasonable person would surely believe that, by Kennedy praying in the middle of the football field after a game while in the general presence of students and parents, BSD is endorsing such a religion. To avoid the possibility of such a result, BSD was justified in restricting Kennedy’s speech. Ultimately, free expression rights must bow to and avoid violating the Establishment Clause’s prohibition on a public school’s endorsement of religious activities. *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1168 (7th Cir. 1993).

In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the Supreme Court held that schools are justified in restricting prayers to be read, even by students, over the public-address system during optional extracurricular events, such as football games. Here, a student delivered a prayer over the intercom speaker before every varsity football game. *Id.* at 294. In its holding, the Court reasoned that the school was endorsing a religion through the student’s prayers over the intercom because “members of the listening audience must perceive the pregame message as a public expression of the views of *the majority of* the student body delivered with the *approval of the school administration*.” *Id.* at 308. (emphasis added).

*Santa Fe Indep. Sch. Dist.* poses extremely analogous facts to the case at bar. Primarily, Kennedy’s prayers at the center of the football field after every game can be seen by parent and student spectators as the majority views of the football staff with the approval of BSD. Thus, BSD can be seen as endorsing such activity in express violation of the Establishment Clause.

A public school may prohibit its staff representatives from participating in student prayers because it improperly entangles the school district in religion and signals an unconstitutional endorsement of religion. *Doe*, 70 F. 3d at 406. *See also* *Stone v. Graham*, 449 U.S. 39 (1980) (holding that the display of a copy of the Ten Commandments on the walls of public classrooms violated the Establishment Clause); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (holding that a moment of silence for prayer constituted state endorsement of religion in violation of the Establishment Clause); *Borden*, 523 F.3d 153 (holding that schools may not allow coaches to participate in religious activity that can be seen as a school’s endorsement of religion).

A plethora of cases have held against public school officials for various practices that could lead to a school’s endorsement of religion in violation of the Establishment Clause. Kennedy’s religious practices of kneeling at the center of the football field to pray, engaging in pre-game locker room prayer and giving devotional speeches before and after football games in the general presence of students, parents and even the opposing football team, constitutes BSD’s endorsement of religion in opposition to the Establishment Clause’s protections. Kennedy did retain certain rights to continue to practice his religious beliefs, however, he adamantly refused and continued to oppose the Establishment Clause’s regulations. Allowing Kennedy to continue engaging in such conduct would ultimately violate not only the Establishment Clause, but also the vast amounts of various case precedent addressing such issues. Consequently, Kennedy’s speech was not constitutionally protected, nor was BSD unjustified in restricting it.

1. **Kennedy Still Possessed Limited Rights To Exercise His Speech As A Public Employee, But Refused To Conduct Himself Under Such Permissible Circumstances**

Although Kennedy was justifiably restricted in kneeling at the center of the football field, he still possessed, and was offered rights to exercise his freedom of speech. 42 U.S.C. § 1983 states in pertinent part, that an individual acting under the color of law cannot deprive another individual of any “rights, privileges, or immunities secured by the Constitution.” 42 U.S.C. § 1983 (1996). To avoid a violation of 42 U.S.C. § 1983, Kennedy cannot be restricted in his access to any rights under the Constitution. However, Kennedy’s speech was not secured under the Constitution. As a matter of fact, under the First Amendment’s Establishment Clause, Kennedy was specifically restrained in exercising religious speech that can be viewed as BSD’s endorsement of a particular religion. To avoid further violation, BSD presented various accommodations to Kennedy to be able to conduct his religious practices.

“There is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 250 (1990). Kennedy’s speech at issue was not a private exercise of speech, but instead BSD’s endorsement of religion, as Kennedy was acting as a representative of BSD during his conduct at issue. To remedy such a clear violation of the Establishment Clause, BSD offered reasonable accommodations for Kennedy that would qualify as private speech. Such accommodations took the form of praying by himself within his own office, pray in any private location within BHS and discuss religion with his colleagues in a private place. “… requirement to accommodations of religion presents no special problems.” *Permissible Accommodations of Religion: Reconsidering the New York Get Statute*, 96 Yale L.J. 1147, 1164 (1987). As stated, Kennedy had ample opportunities to engage in lawful private speech, but he ultimately rejected them. “The Establishment Clause does not forbid all interaction between religious organizations and the state in that certain accommodations by the state will always be necessary in order to insure that people of all religions are accorded the rights given them by the Free Exercise Clause of the First Amendment.” *First Amendment Challenges to Display of Religious Symbols on Public Property*, 107 A.L.R.5th 1, 16a (2018).

In accordance with case law and the Constitution, BSD provided such aforementioned accommodations for Kennedy to continue practicing his religious beliefs in private. Despite such opportunities, Kennedy continued to display public religious conduct that violated the Establishment Clause. Kennedy initially brought suit under Title VII of the Civil Rights Act of 1964 within 42 U.S.C. § 2000e-2(a) to allege a violation of his rights by BSD for terminating his employment. This could not be further from the truth. Primarily, Title VII of the Civil Rights Act of 1964 prevents an employer to “fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual” in relation to “privileges of employment.” 42 U.S.C. § 2000e-2(a) (2018). BSD could not of violated this Act because Kennedy’s speech at issue was not a privilege of employment. In fact, the speech was in direct violation of his employment, law and the Constitution. In summation, even though Kennedy was restricted from public endorsement of religion, BSD gave him numerous accommodations to avoid a violation of Kennedy’s First Amendment, Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983 rights.

**CONCLUSION**

 WHEREFORE, for the reasons set forth above, Respondent, Bremerton School District, respectfully requests this court affirm the Lower Courts holdings to restrict Petitioner from endorsing religion when acting as a public employee in the general presence of students and parents.

 Respectfully Submitted,

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