

No. 03-863

**In the
Supreme Court of the United States**

JOSIAH BUNTING, III, SUPERINTENDENT EMERITUS,
AND J.H. BINFORD PEAY, III, GENERAL, USA (RETIRED),
Petitioners,

v.

NEIL J. MELLEN AND PAUL S. KNICK,
Respondents.

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

**BRIEF OF THE STATES OF TEXAS, ALABAMA, DELAWARE,
INDIANA, KANSAS, LOUISIANA, MISSISSIPPI, NEBRASKA,
OHIO, OKLAHOMA, SOUTH CAROLINA, AND UTAH
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether a public military college's tradition of including a brief, non-denominational prayer before evening meals violates the Establishment Clause when cadets are required neither to participate in the prayer nor to attend the meal.

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INTEREST OF AMICI

Texas and the other *amici* States have a strong interest in this case because they support public colleges and universities, some of which include brief, non-denominational prayers in traditional college ceremonies such as commencement and graduation functions. When such prayers are not intended to inculcate religious belief and cannot reasonably be perceived as coercive to adult students, who are not required to recite them or participate in any way, they do not violate the Establishment Clause. The court of appeals's contrary conclusion regarding VMI's prayer ceremony threatens the longstanding tradition in many public colleges and universities of using brief, non-denominational, and non-coercive

prayers to solemnify official university ceremonies in a manner befitting the university's educational mission. Accordingly, Texas and the other *amici* States have a vital interest in this case.

SUMMARY OF THE ARGUMENT

The panel below erred in extending the “coercion” test, which this Court has applied in school-prayer cases involving minor schoolchildren, to the military-college context in which the persons exposed to the prayer are not children but mature, adult cadets. This extension is supported by neither the Court's precedents nor the rationale underlying the “coercion” test, which is premised on the idea that young children are uniquely susceptible to religious indoctrination. By creating a new rule that even mature college students can be subjected to unconstitutional “coercion,” the panel decision threatens the ability of public colleges and universities to include brief, non-denominational prayers in traditional school ceremonies such as graduations and other official events. The panel's holding creates a significant circuit split on this issue, and both its application to the facts of this case and its potential expansion are inconsistent with the Court's Establishment Clause jurisprudence.

The panel opinion also distorts the Court's application of the “primary effect” and “excessive entanglement” prongs of *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Contrary to the panel's conclusion, VMI's inclusion of a brief, non-denominational prayer before evening meals cannot be reasonably viewed as directly aiding religion or sending a message of governmental sponsorship of religion. VMI's practice of is similar to other non-sectarian, non-proselytizing public prayer practices the Court has upheld against Establishment Clause challenges. It is also firmly footed in the tradition, well-established in our history and culture, of giving thanks for divine providence and recognizing the Nation's religious heritage. The panel's application of *Lemon* reflects a hostility

toward religion that the First Amendment neither requires nor permits.

ARGUMENT

I. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THAT THE ESTABLISHMENT CLAUSE DOES NOT BAR PUBLIC COLLEGES AND UNIVERSITIES FROM INCLUDING NON-SECTARIAN PRAYERS AT FORMAL SCHOOL FUNCTIONS VOLUNTARILY ATTENDED BY MATURE ADULTS.

The Fourth Circuit panel below struck down VMI's tradition of including a brief, non-denominational prayer as part of its supper roll call ceremony, holding that this practice violates the Establishment Clause—notwithstanding the fact that VMI's cadets are not required to participate in the prayer, acknowledge its recitation (other than by remaining standing), or even attend the supper ceremony at which the prayer is read. *See Mellen v. Bunting*, 327 F.3d 355, 371-75 (CA4 2003); *id.*, 341 F.3d, at 321 (Wilkinson, J., dissenting from denial of reh'g en banc) (summarizing rules governing meal attendance and cadet conduct at supper roll call). But VMI's prayer ceremony has neither the aim nor the effect of advancing religion, and the panel decision fails to recognize the legitimate educational goals that underlie the tradition. In striking down a non-sectarian thanksgiving practice voluntarily attended by adult students, the panel opinion misinterprets this Court's Establishment Clause jurisprudence.

Of even greater significance for *amici* States, the scope of the panel decision threatens to undermine Establishment Clause principles applicable to public colleges and universities and other governmental entities. Although the panel opinion purports to limit the scope of the decision to VMI, its reasoning is not confined to the facts of this case. *See Bunting*, 341 F.3d, at 324 (Wilkinson, J., dissenting from denial of reh'g en banc) (“Despite the panel’s best efforts to characterize its opinion as being limited to the facts of this

case, I regret to say that I see nothing narrow in its ruling.”). Instead, the decision threatens to destroy the ability of public colleges and universities to include non-sectarian prayers and benedictions in their convocations, graduation ceremonies, and other formal school events.

The panel opinion reflects uncertainty as to which Establishment Clause standard governs this case: the three-part *Lemon* test, the “coercion” test formulated in *Lee v. Weisman*, 505 U.S. 577 (1992), or both. See *Bunting*, 327 F.3d, at 370. But under either standard, the Establishment Clause does not bar public colleges and universities from including brief, non-sectarian prayers in graduation ceremonies or other official school functions voluntarily attended by mature adults. The panel’s contrary opinion endangers such traditional practices and threatens all vestiges of religion in the public sphere in a manner that is inconsistent with the First Amendment and contrary to the Founders’ intent.

A. The Court Should Grant Certiorari to Confirm That School-Prayer Decisions Involving the Potential Coercion of Children Do Not Apply to a Public College’s Use of Non-Denominational Prayers To Solemnify Official School Functions.

The panel decision below erroneously concluded that VMI’s reading of a brief, non-sectarian prayer is “coercive” to the adult student-cadets who attend VMI. *Bunting*, 327 F.3d, at 371-72. For this holding, the panel looked to the “coercion” analysis this Court conducted in *Lee* and *Santa Fe*, two of its more recent cases involving school prayer in the primary- or secondary-school context. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (prayer at high school football games); *Lee*, 505 U.S., at 587 (prayer at middle- and high-school graduation ceremonies). However, the “coercion” test is inapplicable in the present context, which involves

not impressionable schoolchildren but college students of adult age and maturity.

1. The “Coercion” Test Applies Only to Minor Children.

As VMI points out, the Court’s “coercion” analysis is premised on the idea that young children—unlike mature adults—are particularly susceptible to religious indoctrination bearing the imprimatur of governmental sponsorship or approval. *See Santa Fe*, 530 U.S., at 305 (holding that pre-game prayers bear “the imprint of the State and thus put *school-age* children who objected in an untenable position”) (quoting *Lee*, 505 U.S., at 590) (emphasis added); *Lee*, 505 U.S., at 592 (“[T]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.”); *id.*, at 593 (“Research in psychology supports the common assumption that adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention.”).

This Court has never applied a “coercion” analysis in the context of college students or other adults. Indeed, the Court’s decisions uniformly reflect that the “coercion” standard applicable to minor schoolchildren does not apply to college students or other mature adults.¹ *See Edwards v. Aguillard*, 482 U.S. 578, 584 n.5 (1987)

1. As one of the dissenting judges below aptly recognized:

“It is not difficult to understand why the factor of maturity has come to play such an important role in the Supreme Court’s school prayer decisions. It is not only that primary and secondary school students are particularly susceptible to religious indoctrination. There is also the greater danger that school authorities may seek to take advantage of this susceptibility to promote their own sectarian beliefs. And the susceptibility of primary and secondary school students

(“The potential for undue influence is far less significant with regard to college students who voluntarily enroll in courses. ‘This distinction warrants a difference in constitutional results.’”) (quoting *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 253 (1963) (Brennan, J., concurring)); *id.*, at 608 n.7 (“Of course, the difference in maturity between college-age and secondary students may affect the constitutional analysis of a particular public school policy.”) (Powell, J., concurring); *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (“[T]he individual claiming injury by the [legislative prayer] practice is an adult, presumably not readily susceptible to ‘religious indoctrination’ or peer pressure.”); *cf. Widmar v. Vincent*, 454 U.S. 263, 274 n.14 (1981) (“University students are, of course, young adults. They are less impressionable than younger students and should be able to appreciate that the University’s policy is one of neutrality toward religion.”).

In *Lee*, which involved prayers offered at middle and high school graduations and the students’ attendant dilemma of remaining standing for the prayers or protesting against them, the Court made clear that its holding did “not address whether that choice is acceptable if the affected citizens are mature adults.” 505 U.S., at 593; *see id.* at 599 (“The sole question presented is whether a religious exercise may be conducted at a graduation ceremony where . . . *young graduates* who object are induced to conform.”) (emphasis added). This case presents the Court with an opportunity

may further heighten parental apprehensions that religious practices and principles are being promoted at school that are at odds with those instilled at home. *These dangers are vastly diminished in a higher education setting, if indeed they exist at all.*”

Bunting, 341 F.3d, at 320 (Wilkinson, J., dissenting from denial of reh’g en banc) (emphasis added).

to address a question it left unanswered in *Lee*: whether a State’s inclusion of brief, non-sectarian prayers as part of an official school event amounts to unconstitutional coercion of students who are not required to participate in the prayer (other than by remaining standing for its brief duration) or attend the ceremony at which it is read.

The circuit split created by the panel decision provides further reason for the Court to grant certiorari. In *Chaudhuri v. Tennessee*, which involved a professor’s challenge to a brief, non-sectarian prayer or moment of silence offered at college graduation ceremonies, the Sixth Circuit distinguished *Lee* on much the same basis the *Lee* Court anticipated: *Lee* involved middle- and high-school students involuntarily subjected to school prayer, whereas the college-graduation ceremony in *Chaudhuri* involved mature adults. 130 F.3d 232, 238-39 (CA6 1997), *cert. denied*, 523 U.S. 1024 (1998). Like the supper roll call in this case, attendance at the graduation ceremonies at issue in *Chaudhuri* was “encouraged but not mandatory”; moreover, even if the plaintiff had been required to attend, “he would not have had to participate in the prayers or pay any attention to them.” *Id.*, at 239. In rejecting the plaintiff’s claim of unconstitutional coercion, the Sixth Circuit noted both the plaintiff’s mature age and the voluntariness of his attendance. *See id.*

The panel opinion below also conflicts with the Seventh Circuit’s decision in *Tanford v. Brand*, 104 F.3d 982 (CA7), *cert. denied*, 522 U.S. 814 (1997). *Tanford* involved a non-sectarian invocation and benediction delivered at a state university’s graduation ceremony. *Id.*, at 983. Like the Sixth Circuit in *Chaudhuri*—and unlike the Fourth Circuit panel in this case—the Seventh Circuit concluded that *Lee*’s “coercion” test is inapplicable in the circumstance of a college graduation involving voluntary attendance by mature adults:

“The district court found *Lee* to be inapplicable because these plaintiffs are adults rather than younger students requiring special solicitude. In this regard, the district court observed that peer pressure is unlikely to dissuade college graduates from protesting, and the opinion below noted that thousands of graduates chose not to attend the stadium morning ceremony and that non-adherents could dissent without being noticed.”

* * * * *

“Unlike *Lee*, here there was no coercion—real or otherwise—to participate.”

104 F.3d, at 985. Similarly, Respondents in this case were not required to recite the prayers, bow their heads, close their eyes, or even attend the supper seating at which the prayers were read. Given that Respondents did not allege that they felt pressure to attend or participate in the prayer ceremony, VMI’s ceremony “is not coercive in any real sense.” *Bunting*, 341 F.3d, at 321 (Wilkinson, J., dissenting from denial of reh’g en banc).

2. The Decision Below Creates a Circuit Split on the Applicability of the “Coercion” Test.

Chaudhuri and *Tanford* create a significant circuit split because both involved brief, non-sectarian prayers or benedictions offered at official ceremonies held by state universities. In both cases, the attendees were mature college students rather than minor schoolchildren, and students were not required to participate in the prayers or even attend at all. Because these facts mirror the relevant facts of the present case, the panel decision below “creates a deep conflict” with *Chaudhuri* and *Tanford* that warrants certiorari review. *Bunting*, 341 F.3d at 328 (Niemeyer, J., dissenting from denial of reh’g en banc); *see also id.*, at 320 (“It is therefore not surprising that our sister circuits have reached a contrary conclusion from the panel, declining to extend the Court’s school prayer

decisions to the college environment.”) (Wilkinson, J., dissenting from denial of reh’g en banc) (citing *Chaudhuri* and *Tanford*).

What distinguishes children from adults, and thus justifies limiting the application of the “coercion” test to schoolchildren, is that children are presumed to have not yet developed a sufficiently strong sense of values and self-identity to prevent these societal pressures from becoming overwhelming. *See, e.g., Lee*, 505 U.S., at 592-93. VMI cadets not only have sufficient age and life experience to render this presumption inapplicable, but they have already demonstrated their more mature character by choosing a unique educational experience that is more mentally and physically demanding than that experienced by the majority of young adults. If VMI cadets—a “self-selecting group of men and women who voluntarily expose themselves to a rigorous training environment,” *Bunting*, 341 F.3d, at 328 (Niemeyer, J., dissenting from denial of reh’g en banc)—are subject to unconstitutional coercion simply because they may hear the VMI prayer if they choose to attend the supper seating at which it is read, then arguably so are ordinary college students or other adults who voluntarily attend graduation ceremonies at which similar brief, non-sectarian prayers are read. *Amici* States respectfully urge the Court to clarify that its precedent does not support either result.

B. The Panel’s Misapplication of the *Lemon* Test Threatens to Ban Even Benign, Non-Denominational Prayers Traditionally Included at University Graduations and Similar Formal College Ceremonies.

The panel opinion also invalidated VMI’s supper prayer ceremony on the basis that it fails the “primary effect” and “excessive entanglement” prongs of *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (holding that primary effect of challenged practice must be one that neither advances nor inhibits religion, and it must not foster an excessive entanglement with religion). *See*

Bunting, 327 F.3d, at 374-75. While reluctantly assuming that the legitimate secular purposes advanced by VMI satisfied *Lemon*'s first prong, *see id.*, at 374, the panel misapplied *Lemon*'s second and third prongs. In so doing, the panel decision threatens the ability of public colleges and universities to continue a tradition of using non-denominational prayers, benedictions, and invocations to solemnify formal school events and ceremonies.

1. The Panel's Application of the "Primary Effect" Test Is Out of Step With This Court's Decisions and Those of Other Circuit Courts.

While conceding that "VMI intended the supper prayer to be both inclusive and nondenominational," 327 F.3d, at 375, the panel held that the prayer has the primary effecting of promoting religion "in that it sends the unequivocal message that VMI, as an institution, endorses the religious expressions embodied in the prayer." *Id.*, at 374. But in reaching this determination regarding the prayer's primary effect, the panel looked solely to school prayer cases involving middle- and high school children. *See id.* (citing *Engel v. Vitale*, 370 U.S. 421, 430 (1962), and *Santa Fe*, 530 U.S., at 307-08). As discussed above, these cases should not control the present case, in which the prayer audience consists not of impressionable schoolchildren but mature college students. Moreover, the panel disregarded what Judge Wilkinson observed were the prayer's obvious and legitimate primary effects: solemnizing the mealtime gathering, encouraging reflection, and promoting the training of future leaders by familiarizing cadets with religious practices. *Bunting*, 341 F.3d, at 324 (Wilkinson, J., dissenting from denial of reh'g en banc).

Under the panel's standard, a State's arrangement for a brief moment of prayer in a college audience of adult students could likewise constitute an "endorsement" of religion that violates *Lemon*'s "primary effect" prong—even if participation is voluntary

and there is no allegation or evidence that students feel any pressure to attend. In effect, this re-writes the “primary effect” test to produce a constitutional violation whenever a governmental body includes prayer as part of an otherwise secular gathering of adults—regardless of whether the prayer had the actual effect of communicating a message of governmental endorsement of religion. *See Lynch*, 465 U.S., at 692 (O’Connor, J., concurring). This conflicts with the Court’s determination that the practice at issue must confer a substantial and direct benefit on one religion, or religion in general, to violate *Lemon*’s second prong. *See Lynch v. Donnelly*, 465 U.S. 668, 681-83 (1984) (rejecting conclusion that city’s inclusion of creche in Christmas display had primary effect of conferring substantial benefit on religion in general and on Christianity in particular).

The panel’s analysis is also at odds with the Court’s decision in *Marsh*, which upheld Nebraska’s practice of opening its legislative sessions with a prayer spoken by a chaplain paid by the state and approved by the state legislature. Significantly, the Court in *Marsh* relied on the plaintiff’s status as an adult—one “presumably not readily susceptible” to religious indoctrination or peer pressure—to uphold the legislature’s traditional prayer. 463 U.S., at 792. Given that this case similarly involves adults and not children, it is difficult to square the panel’s decision—holding that voluntarily attended prayers initiated by a public college send a message of government endorsement of religion—with *Marsh*’s conclusion upholding prayers sponsored by the Nebraska Legislature.

Although the panel opinion concluded that *Marsh* is essentially limited to the legislative-prayer context, *Marsh* can be more broadly read as authorizing States to maintain those religious practices that are part of the fabric of our society if the Framers did not intend for the Establishment Clause to prohibit such practices. *See ACLU of Ohio v. Capital Square Review & Advisory Bd.*, 243 F.3d 289, 300-02 (CA6 2001) (en banc) (concluding that Ohio’s state

motto—“With God, All Things Are Possible”—is constitutional under both *Marsh* and *Lemon*). Thus, while governmental inculcation of religious belief has the primary effect of advancing religion in violation of *Lemon*’s second prong, see *Agostini v. Felton*, 521 U.S. 203, 223 (1997), non-sectarian prayers at public ceremonies, when they merely recognize God or give thanks for divine providence in a manner appropriate to the event, do not.

The panel’s contrary conclusion creates an additional circuit split, as both the Sixth and Seventh Circuits have rejected the argument that a State’s sponsorship of non-denominational prayer at college graduation ceremonies has the primary effect of advancing religion. See *Chaudhuri*, 130 F.3d, at 237; *Tanford*, 104 F.3d, at 986. As the Sixth Circuit stated in *Chaudhuri*:

“The principal or primary effect of including generic prayers at public university functions, in our view, is not to advance or inhibit religion. A reasonable observer, it seems to us, would conclude that the nonsectarian prayers delivered at [university] events were intended to solemnize the events and to encourage reflection. A reasonable observer would not conclude that [the university] was trying to indoctrinate the audience. It would not be reasonable to suppose that an audience of college-educated adults could be influenced unduly by prayers of the sort in question here. . . . The prayers were no more than a ‘tolerable acknowledgment of beliefs widely held among the people of this country.’”

130 F.3d, at 237 (quoting *Marsh*, 463 U.S., at 792).

VMI’s ceremony is similar to the tradition of incorporating prayer into formal university events such as graduations. In each case, the prayers are brief and non-sectarian; they are spoken before an audience of mature adults in a higher education setting; and they represent only a small part of a larger ceremony that is secular in nature. The primary effect of the prayer is not indoctrination of the

listener but merely recognition of the role of divine providence in accomplishing the institution's past achievements and future goals. Far from violating the Establishment Clause, such recognition is consonant with the Framers' intent: "Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders." *Lynch*, 465 U.S., at 675.

2. The Panel's Misapplication of the "Entanglement" Test Threatens the Ability of Public Colleges and Universities to Administer Formal School Functions.

In finding that VMI's ceremony spawned excessive entanglement with religion, the panel focused almost exclusively on the fact that VMI composed and administered the prayers used at its supper roll call. *Bunting*, 327 F.3d, at 375. This misinterprets *Lemon*'s third prong in a way that threatens the ability of public colleges and universities to administer formal school functions.

In many university situations where prayer is part of a larger official school function—such as a college graduation—a school may ask a religious leader from the local community to compose and deliver the prayer. But doing so is not required to satisfy the *Lemon* test or any other constitutional standard; instead, for special ceremonies or events involving the public it is often the case that university officials may prefer to involve a member of the local religious community to reaffirm ties between "town and gown," or to mark the significance of the event in the lives of the students who participate. By contrast, VMI's supper roll call, though no less formal than such college events, does not involve members of the general public and takes place daily; consistent with VMI's emphasis on order and tradition, there is a unique prayer that corresponds with each day of the week. Accordingly, it is appropriate for VMI to conduct the prayer ceremony itself,

following its established rotation, rather than requesting assistance from the outside world on a daily basis.

More importantly, the panel's rejection of institutional control ignores the reality that requiring outside personnel to compose, conduct, and administer all prayers would greatly reduce a school's ability to ensure that each day's prayer is non-sectarian and non-proselytizing. Only by maintaining some control of the prayer ceremony can VMI be certain that its supper prayer is not found to violate the First Amendment.

Like the Army, Navy, Air Force, and Marines, VMI has its own chaplain. While other public colleges and universities may choose to rely on members of the local religious community to offer prayers at particular events or ceremonies, depending on the nature of the event at hand, the First Amendment does not require a school to shun its own clergy. The panel's holding places schools in the difficult position of simultaneously having to maintain and avoid control over the content and administration of any prayer the school wishes to use in its formal events and ceremonies.

The panel's finding of excessive entanglement based on VMI's institution of the supper prayer is contrary to the Founding Fathers' intent as well as this Court's jurisprudence. "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). Invoking Divine guidance on a public institution entrusted with educating and preparing tomorrow's leaders is neither "an 'establishment' of religion or a step toward establishment; it is simply a tolerable acknowledgment of beliefs widely held among the people of this country." *Marsh*, 463 U.S., at 792. The Court has disavowed the notion that such acts necessarily violate the Establishment Clause:

"Rather than requiring government to avoid any action that acknowledges or aids religion, the Establishment Clause permits government some latitude in recognizing and

accommodating the central role religion plays in our society. Any approach less sensitive to our heritage would border on latent hostility toward religion, as it would require government in all its multifaceted roles to acknowledge only the secular, to the exclusion and so to the detriment of the religious.”

County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 657 (Kennedy, J., concurring in judgment in part and dissenting in part) (citations omitted).

II. THE COURT SHOULD GRANT CERTIORARI TO REAFFIRM THE EXTENT TO WHICH STATES MAY LEGITIMATELY ACKNOWLEDGE RELIGION’S ROLE IN THE HISTORY OF THE NATION AND ITS PEOPLE.

“Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion” *Schempp*, 374 U.S., at 306 (Goldberg, J., concurring). The Court has recognized that complete separation between government and religion “is not possible in an absolute sense” and that “[s]ome relationship between government and religious organizations is inevitable.” *Lynch*, 465 U.S., at 672 (quoting *Lemon*, 403 U.S., at 614). In the same vein, “it has never been thought either possible or desirable to enforce a regime of total separation [between religion and government].” *Comm. for Pub. Educ. v. Nyquist*, 413 U.S. 756, 760 (1973).

“Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility towards any.” *Lynch*, 465 U.S., at 673. Governmental policies of “accommodation, acknowledgment, and support for religion are an

accepted part of our political and cultural heritage.” *Allegheny*, 492 U.S., at 657 (Kennedy, J., concurring in judgment in part and dissenting in part). Through accommodation, government shows “respect to the religious nature of our people.” *Zorach*, 343 U.S., at 314.

Examples of such public recognitions of religion are numerous. As the Court has observed: “Our history is replete with official references to the value and invocation of Divine guidance,” including official Thanksgiving and Christmas holidays, House and Senate chaplains, the national motto “In God We Trust,” the Pledge of Allegiance, Moses holding the Ten Commandments on the frieze of this Court, and numerous presidential proclamations calling for a National Day of Prayer. *Lynch*, 465 U.S., at 672-77. Formal proceedings in this Court, as well as most lower federal courts, open with an announcement concluding, “God save the United States and this Honorable Court.” *Marsh*, 463 U.S., at 786. As Justice O’Connor explained in *Lynch*, “because of their history and ubiquity, those practices are not understood as conveying government approval of particular religious beliefs.” *Lynch*, 465 U.S., at 693 (O’Connor, J., concurring). If the Establishment Clause permits the above examples of governmental interaction with religion, it likewise does not prohibit public colleges and universities from including brief, non-denominational prayers in their formal ceremonies and events voluntarily attended by adults.

“A prayer may serve to dignify or to memorialize a public occasion.” *Chaudhuri*, 130 F.3d, at 236. The use of prayer to solemnify formal university events such as graduations has, like the practice of opening legislative sessions with a prayer, “become part of the fabric of our society.” *Marsh*, 463 U.S., at 792. When the context is appropriate—such as a benediction at a college graduation, or a blessing before a meal at a military gathering—state-sponsored prayer is “simply a tolerable acknowledgment of beliefs widely held among the people of this

country.” *Id.* Far from establishing religion, such practices are part of the “unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789.”² *Lynch*, 465 U.S., at 674.

As the Sixth Circuit stated in *Chaudhuri*:

“Any prayer has a religious component, obviously, but a

2. In 1789, when the First Congress proposed the Bill of Rights for ratification by the States, it called upon President George Washington to “recommend to the People of the United States, a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God....” 1 ANNALS OF CONG. 90, 92, 949-50, 958-59 (Joseph Gales ed., 1789). President Washington fulfilled Congress’s request with a proclamation urging Americans to unite in thanking the “Author of all... good” for His protection and mercies, and beseeching Him to pardon, guide and bless our nation. Presidential Proclamation (Oct. 3, 1789), *reprinted in* 30 THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES, 1745-1799, at 427 (John C. Fitzpatrick ed.) (1931-1944). Subsequent Presidents have continued the tradition of presidential proclamations calling for days of prayer or thanksgiving, as this Court has observed. *See Lynch*, 465 U.S., at 675 n.3 (quoting Proclamation No. 2629, 9 Fed. Reg. 13,099 (1944) and citing similar proclamations by six subsequent Presidents). This practice has continued through the present day: President George W. Bush alone has, to date, issued ten proclamations calling for national days of prayer. *See* Proclamation No. 7701, 68 Fed. Reg. 53,011 (Sept. 4, 2003); Proclamation No. 7681, 68 Fed. Reg. 31,935 (May 22, 2003); Proclamation No. 7672, 68 Fed. Reg. 23,829 (Apr. 30, 2003); Proclamation No. 7588, 67 Fed. Reg. 56,893 (Aug. 31, 2002); Proclamation No. 7567, 67 Fed. Reg. 36,499 (May 21, 2002); Proclamation No. 7547, 67 Fed. Reg. 21,559 (Apr. 26, 2002); Proclamation No. 7462, 66 Fed. Reg. 47,947 (Sept. 13, 2001); Proclamation No. 7444, 66 Fed. Reg. 29,445 (May 25, 2001); Proclamation No. 7430, 66 Fed. Reg. 22,103 (Apr. 27, 2001); Proclamation No. 7403, 66 Fed. Reg. 7,861 (Jan. 20, 2001).

single-minded focus on the religious aspects of challenged activities—which activities, in an Establishment Clause case, are religiously-oriented by definition—would extirpate from public ceremonies all vestiges of the religious acknowledgments that have been customary at civic affairs in this country since well before the founding of the Republic. The Establishment Clause does not require—and our constitutional tradition does not permit—such hostility toward religion. The people of the United States did not adopt the Bill of Rights in order to strip the public square of every last shred of public piety.”

Chaudhuri, 130 F.3d, at 236 (citation omitted).

CONCLUSION

The Court should grant the petition for writ of certiorari.

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