FREEDOM FROM RELIGION *foundation*

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November 24, 2015

SENT VIA U.S. MAIL AND EMAIL husfewv@bay.k12.fl.us

Mr. Bill Husfelt
Superintendent
Bay District Schools
1311 Balboa Avenue
Panama City, FL 32401

Re: Coach converting students; staff involvement in FCA

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to alert you to yet another serious constitutional violation occurring in Bay District Schools. FFRF is a national nonprofit organization with more than 23,000 members, including more than 1,000 members in Florida and a local chapter, the Central Florida Freethought Community, based in Orlando. As you know, we protect constitutional separation between state and church.

According to reports,[1] Mosley High School head football coach Jeremy Brown knowingly uses his position to proselytize and preach to students. Brown mistakenly believes this is merely a matter of not being "politically correct," when in fact it is a gross violation of students' rights of conscience. For Brown, "the most important thing" about coaching has "got to be sharing Christ with the kids." Brown believes that he is "in the business of earning crowns and not rings," referring a passage from the bible that advocates "preach[ing] to others."[2] He measures success by whether or not "every kid on our football team is saved."

This marks the fourth and fifth constitutional violations we've been notified of in BDS since 2012. The previous violations included: (1) the district allowing Gideons to distribute bibles to students during instructional time and staff facilitating that distribution and encouraging students to take the bibles; (2) the district inviting more than 30 pastors into the schools to minister to students around the campuses;[3] and (3) allowing a pastor from Northstar Church to proselytize students at Mosley High School during the lunch hour. We contacted you about that third violation on September 18, 2015 and have still not had a response.

This persistent and wanton disregard for the First Amendment must end.

School staff may not proselytize students.

School staff, including coaches, may not promote their personal religious views to students, who are a vulnerable, captive audience, with no choice but to listen to Brown's religious ramblings. The district has an obligation to ensure that "subsidized teachers do not inculcate religion." *Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971).

Schools "can direct a teacher to 'refrain from expressions of religious viewpoints in the classroom and like settings.'" *Helland v. South Bend Comm. Sch. Corp.*, 93 F.3d 327 (7th Cir.

1993) (quoting *Bishop v. Arnov*, 926 F.2d 1066, 1077 (11th Cir. 1991)). When acting in their official capacities, a coach's "speech can be taken as directly and deliberately representative of the school. Hence, where the in-class speech of a teacher is concerned, the school has an interest . . . in scrutinizing expressions that 'the public might reasonably perceive to bear [its] imprimatur[.]' " *Bishop*, 926 F.2d at 1073 (11th Cir. 1991) (quoting *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988)). "Because of the potential establishment conflict, even the appearance of proselytizing by a professor should be a real concern to the [school]." *Id.* at 1077; *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968) ("[T]he State has interests as an employer in regulating the speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general.").

Staff and coaches do not have a free speech or free exercise right to promote their personal religion. "Because the speech at issue owes its existence to [his] position as a teacher, [the School District] acted well within constitutional limits in ordering [the teacher] not to speak in a manner it did not desire." *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012); *see also Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ("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.").

Coach Brown has knowingly and willfully abused the power of his public office to try and convert other people's children to his religion. He is not fit to work in a public school system.

Coaches may not lead, encourage, or even participate in prayers with their students.
One of the student athletes said, "I never really had a coach tell me about Christ or anything like that…. We pray every day before and after practice so he helped me kind of get closer to Christ and give the glory to Him."[1] The novelty of this experience is likely because Brown's actions are highly illegal.

The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Abington Township Sch. Dist. v. Schempp,* 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale,* 370 U.S. 421 (1962) (declared prayers in public schools unconstitutional); *see also Lee v. Weisman*, 505 U.S. 577 (1992) (ruled prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree,* 472 U.S. 38 (1985) (overturned law requiring daily "period of silence not to exceed one minute … for meditation or daily prayer.").

Moreover, the Supreme Court has struck down pre-game invocations that signal school endorsement even when led by a student. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games). Likewise, a high school coach praying with student-players at a "regularly scheduled school-sponsored function conducted on school property" would lead an objective observer to perceive it as state endorsement of religion. *Id.* The Supreme Court has stated that "[r]egardless of the listener's support for, or objection to, the

[1] Jamie Hale, "Mosley coach and students talk God and the gridiron," Nov. 20, 2015. *Available at* http://www.wjhg.com/home/headlines/Mosley-coach-and-students-talk-God-and-the-gridiron-351905311.html

message, an objective [high school] student will unquestionably perceive the [religious message] as stamped with her school's seal of approval." *Id.*

Even a coach's participation in a team's prayer circle is illegal and inappropriate. *See, e.g., Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008), *cert. denied*, 129 S. Ct. 1524 (2009) (declaring the coach's organization, participation and leading of prayers before football games unconstitutional); *Doe v. Duncanville Indep. Sch. Dist.,* 70 F.3d 402 (5th Cir. 1995) (declaring basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

In *Borden*, the Third Circuit Court of Appeals held the high school football coach, who had an extensive history of organizing, leading and participating in prayers before games, had violated the Establishment Clause by "bow[ing] his head and tak[ing] a knee while his team pray[ed]." *Borden*, 523 F.3d at 174. The court explained, "'if while acting in their official capacities, [school district] employees join hands in a prayer circle or otherwise manifest approval and solidarity with the student religious exercises, they cross the line between respect for religion and the endorsement of religion.'" *Id.* at 178 (quoting *Duncanville*, 70 F.3d at 406).

The court in *Borden* also rejected the coach's argument that the school district's policy of prohibiting its employees from engaging in prayer with students violated the employees' right to free speech. *See id.* at 174. In fact, the court found that the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *See id.* The Fifth Circuit in *Duncanville* also rejected the argument that a school district could not "prevent its employees from participating in student prayers without violating their employees' rights to the free exercise of religion, to association, and to free speech and academic freedom." *Duncanville,* 70 F.3d at 406. It noted that "the principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the establishment clause." *Id.* (quoting *Lee*, 505 U.S. at 586-87).

School staff may not use the FCA to proselytize students. In fact, staff may not participate in the FCA at all.

As you may know, the Equal Access Act does not permit school staff to run religious clubs. In fact, the EAA requires that "employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity." 20 U.S.C.A. § 4071 (c)(3). Staff are strictly chaperones: "Under the [Equal Access] Act, however, faculty monitors may not participate in any religious meetings, and nonschool person[s] may not direct, control or regularly attend activities of student groups." *See Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990). The Court continued, "[m]oreover the Act prohibits school 'sponsorship' of any religious meetings… which means that school officials may not promote, lead, or participate in any such meeting." *Id.*

The EAA was written to apply to noncurricular clubs meeting during non-instructional time, which means the staff participation restriction was written to apply during non-instructional time too. In *Sease v. School District of Philadelphia*, a school secretary sponsored and participated in a school gospel choir. The secretary attempted to claim that the choir met after hours and that, as secretary, her school duties were not the same as teachers and therefore she was not prevented

from participating. 811 F. Supp. 183 (E.D. Pa. 1993). The court wrote that the "suggestion that Mrs. Safford ceases to be a school employee within the meaning of the Act because her role as leader of the Gospel Choir is assumed after school hours, and is outside the scope of her employment as a school secretary, defies logic and flies in the face of the manifest purpose of the Equal Access Act." *Id.* at 192.

Finally, students cannot invite outside adults to regularly attend club meetings: "nonschool person[s] may not direct, control or regularly attend activities of student groups." *See Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990). If the club is regularly inviting outside adults to attend, it cannot be considered a student-led group under the EAA and must be disbanded.

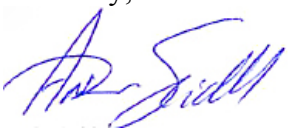
Student clubs must be student clubs, not excuses for adults to promote religion in school.

To honor the Constitution, Bay County Schools clearly has a lot of work to do. The district must:

1. Instruct all staff "to refrain from expressions of religious viewpoints in the classroom and like settings." *Helland*, 93 F.3d 327 (quoting *Arnov*, 926 F.2d 1066, 1077).
2. Dismiss Coach Brown or at the very least sanction him and monitor all his future coaching activities to ensure he complies with the law.
3. Remind staff that they may not participate in student religious activity.
4. Remind staff that they are only permitted to act as chaperones at student-led clubs. They may not participate in any way, nor may they allow outside individuals to run the club or regularly appear.

I look forward to your prompt response.

Sincerely,



Andrew L. Seidel
Staff Attorney
Freedom From Religion Foundation

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[1] All quotes from, Jamie Hale, "Mosley coach and students talk God and the gridiron," Nov. 20, 2015. *Available at* http://www.wjhg.com/home/headlines/Mosley-coach-and-students-talk-God-and-the-gridiron-351905311.html

[2] 1 Corinthians 9:24-27

[3] NBC News Broadcast, WHJB, August 5, 2014. *Available at* http://www.wjhg.com/home/headlines/Pastors-Coming-Bay-Co-Schools--269923211.html?device=phone