

FREEDOM FROM RELIGION *foundation*

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January 5, 2011

**SENT VIA U.S. MAIL & FAX
(915) 887-5484**

Dr. Terri Jordan
Interim Superintendent
El Paso Independent School District
6531 Boeing Dr.
El Paso, TX 79925

Re: Pre-Game Prayers with High School Football Team

Dear Dr. Jordan:

I am writing on behalf of a concerned citizen, and Texas members of the Freedom From Religion Foundation (FFRF), to inform you of a serious constitutional violation occurring at Bowie High School. FFRF is a national nonprofit organization with over 17,000 members across the country, including more than 800 in Texas. Our purpose is to protect the constitutional principle of separation between state and church.

It is our information and understanding that the football team at Bowie High School has – in the past – engaged in locker room prayers. It is our further understanding that the team has been led in group prayers by Pastor Sanchez, and that coaches have participated by at least bowing their heads and kneeling. The video available at http://www.youtube.com/watch?v=7GBi_0qut4k (last accessed January 5, 2012 at 3:25pm) shows this practice from the fall of 2010. We are concerned that this prayerful practice continues at Bowie High School.

It is illegal for a public school to organize, sponsor, and lead prayers at public school events. The Supreme Court has continually struck down formal teacher- or school-led 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."). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government-endorsement of religion, which violates the Establishment Clause of the First Amendment.

The Supreme Court has struck down pre-game invocations at school football games. *See generally, Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (struck down a school policy that authorized students to vote on whether to hold a prayer at high school football games). A prayer taking place at a “regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as a state endorsement of religion. *Id.* at 308. The Court stated that in this context, “[r]egardless of the listener’s support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school’s seal of approval.” *Id.*

Furthermore, a public school coach’s participation in a team’s prayer circle is illegal and inappropriate. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (indicating that public school faculty may not participate in any student-led religious meetings); *Culbertson v. Oakridge Sch. Dist.*, 258 F.3d 1061 (10th Cir. 2001) (held a school district policy allowing teachers to distribute religious literature violated the Establishment Clause because it creates an impression of school endorsement of religion). In fact, Supreme Court Justice Blackmun has stated, “it is not enough that the government restrain from compelling religious practices, it must not engage in them either...” *Lee v. Weisman*, 505 U.S. 577, 604 (1992) (Blackmun, J., concurring). It is clear that federal law dictates government employees should refrain from actively participating in religious activities while acting within their governmental role to avoid any perception of government endorsement of religion and/or excessive entanglement with religion.

More notably, federal courts, including the United States Court of Appeals for the Fifth Circuit, which includes Texas, have specifically held public school coaches’ participation in their team’s prayer circles unconstitutional. *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 (U.S. Mar. 2, 2009) (No.08-482) (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. In that case, the court stated that the coach’s involvement in the prayer by ‘taking a knee’ and ‘bowing his head’ during the prayers, even when student-led, “would lead a reasonable observer to conclude he was endorsing religion.” *Id.* at 176. The court continued, “ ‘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’

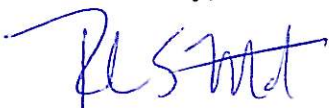
right to free speech. *See id.* at 174. In fact, the court found that the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *See id.* The Fifth Circuit in *Doe* also rejected the argument that a school district 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.” *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 (5th Cir. 1995). 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).

In addition, this practice seems to be inconsistent with the Coaches Code of Ethics found in the El Paso Independent School District Athletics Handbook (http://www.episd.org/departments/athletics/hdbk_docs/empl/AE-Code%20of%20Ethics.pdf), which states that “[i]n his/her relationship with players under his/her care, the coach should always be aware of the tremendous influence he/she controls for good or bad. Parents trust their dearest possession to the coach's charge, and the coach through his/her own example must always be sure that the athletes who have played under him/her are finer and more decent for having done so.” Given that 15% of Americans do are not religious (American Religious Identification Survey 2008, http://commons.trincoll.edu/aris/files/2011/08/ARIS_Report_2008.pdf at 3), it is almost certain that there are nontheistic students on the Bowie High School football team. By participating in the prayers and inviting clergy to lead them, the coaches are sending a message of exclusion to nontheists on the football team and to those believers whose religion is not being professed during these locker room prayers. It also creates the perception that nontheists are lesser citizens for not believing in a god.

El Paso Independent School District must take immediate action to ensure that coaches do not lead, organize, invite clergy to deliver, encourage, or participate in prayers with their teams. The coaches apparent organizing and obvious participation in a team prayer constitutes an unconstitutional government endorsement of religion. A reasonable member of the Bowie High School football team would certainly perceive such a prayer “as stamped with [his or] her school’s approval.” *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308.

We ask that the school district commence an immediate investigation into the complaints alleged and take immediate action to stop all school-sponsored prayers occurring at any district events. We ask that you inform us promptly in writing of the steps the district takes to remedy this serious violation of the First Amendment.

Sincerely,



Rebecca S. Markert
Staff Attorney