

FREEDOM FROM RELIGION *foundation*

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November 30, 2018

SENT VIA EMAIL AND U.S. MAIL:
stacey.humbaugh@sgibson.k12.in.us

Dr. Stacey Humbaugh
Superintendent
South Gibson School Corporation
1029 W 650
Fort Branch, IN 47648

Re: Coach participation in student prayers

Dear Dr. Humbaugh:

I am writing on behalf of the Freedom From Religion Foundation to alert you to a constitutional violation that occurred at a South Gibson School Corporation athletic event. FFRF is a national nonprofit organization with about 32,000 members across the country, including more than 450 in Indiana. FFRF's purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned District community member contacted us to report that Gibson Southern High School personnel prayed with student athletes after a home game against Reitz Memorial High School on November 2, 2018. The enclosed photograph was posted on social media and shows coaching staff for both teams, as well as other adults, bowing their heads in prayer and placing their hands on students, along with the caption, "This is how two of the best football programs in southern Indiana complete a game . . . the power of prayer – at Gibson County, Indiana."

It is unconstitutional for public school athletic coaches to lead their teams in prayer, participate in student prayers, or to otherwise promote religion to students. We are writing to request assurances that this constitutional violation will not reoccur.

The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (holding student-led prayer over the loudspeaker before football games unconstitutional. "Regardless 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" because it occurred at a "regularly scheduled school-sponsored function conducted on school property."); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily "period of silence not to exceed one minute . . . for meditation or daily prayer"); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (holding school-sponsored devotional bible reading and recitation of the Lord's Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring school-sponsored prayers in public schools unconstitutional).

In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

Public school coaches must refrain not only from leading prayers themselves, but also from participating in students' prayers. 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) (noting that public school faculty may only be at student-led religious meetings in a "nonparticipatory capacity."). Federal courts have held that even a public school coach's silent participation in student prayer circles is unconstitutional. *See, e.g., Borden v. Sch. Dist. of the Twp. of E. Brunswick*, 523 F.3d 153 (3d 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) (holding a basketball coach's participation in student prayer circles an unconstitutional endorsement of religion).

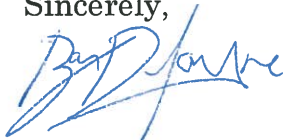
In *Borden*, the Third Circuit Court of Appeals held the high school football coach's history of organizing, leading, and participating in prayers before games was unconstitutional. *Borden*, 523 F.3d at 174. In that case, the court stated that the coach's involvement in the prayer by "taking a knee" 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. *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. *Id.*

The coaches' conduct in the enclosed photograph is unconstitutional because they endorse and promote religion when acting in their official capacity as school district representatives. When public school employees acting in their official capacities organize and advocate for team prayer, they effectively endorse religion on the District's behalf.

We ask that the South Gibson School Corporation commence an immediate investigation and take appropriate corrective action to ensure that in the future Gibson Southern High coaches will not pray with students during District athletic programs. Please inform us in writing of the steps you are taking to remedy this serious and flagrant violation of the First Amendment so that we may notify our complainant that this issue has been resolved.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan D. Jayne", written over a horizontal line.

Ryan D. Jayne
Staff Attorney

Enclosure



This is how two of the best football programs in southern Indiana complete a game...the power of prayer 🙏🇺🇸 — at Gibson County, Indiana.