

FREEDOM FROM RELIGION *foundation*

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September 20, 2017

SENT VIA EMAIL & U.S. MAIL: etyler@bcbe.org

Mr. Eddie Tyler
Superintendent
Baldwin County Public Schools
2600-A North Hand Avenue
Bayminette, AL 36507

Re: Unconstitutional Coach-Led Prayer

Dear Superintendent Tyler:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation that recently occurred in Baldwin County Public Schools. We wrote to you on September 14, 2016, regarding coach-led prayer at Spanish Fort High School. We have not yet received a response to that letter. As you may recall, FFRF is a national nonprofit organization with more than 29,000 members across the country, including members in Alabama. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that on September 5, 2017, a football player was injured during an Elberta High School freshman football game. A complainant reports that immediately following the injury, Coach Thomason called all of the players to the sideline and asked them to remove their helmets. He then demanded that all players take a knee, and said "I don't care if your parents in the stands don't like it. I don't care if you don't like it. We are going to pray for that boy on the field. Get on your knee now." We understand the coach then led the team in prayer.

While it is laudable for students and coaches to express concern over an injured player, Coach Thomason's actions are inexcusable. Coaches may not use an injury as an opportunity to force students to participate in a religious exercise. As you know, it is illegal for public school athletic coaches to lead their teams in prayer. 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"); *Abington Twp. Sch. Dist. 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) (holding 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 East 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).

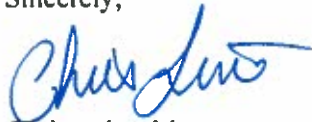
In *Borden*, the Third Circuit Court of Appeals held the high school football coach's extensive history of organizing, leading and participating in prayers before games was unconstitutional because it violated the Establishment Clause. *Borden*, 523 F.3d at 174. In that case, the court stated that the 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.*

Coach Thomason's conduct is unconstitutional because he endorses and promotes his religion while acting in his official capacity as a school district employee. Certainly, he represents the school and the team when he acts in his official role as coach of the Elberta High School football team. Therefore, he cannot lead his team in prayer and he cannot organize or advocate for students to lead team prayer either. When a public school employee acting in an official capacity organizes and advocates for team prayer, he effectively endorses religion on the District's behalf.

We ask that the District commence an immediate investigation into the complaint alleged and take immediate action to stop any and all prayers occurring within any 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.

Sincerely,



Christopher Line
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation