

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL & U.S. MAIL

ronnie.dotson@carter.kyschools.us

Dr. Ronnie Dotson, Superintendent
Carter County Schools
228 S. Carol Malone Blvd.
Grayson, KY 41143

Re: Unconstitutional Coach Participation in Prayer

Dear Dr. Dotson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation that occurred in Carter County Schools. FFRF is a national nonprofit organization with more than 30,000 members across the country, including members in Kentucky and a state chapter. FFRF's purposes are to protect the constitutional separation between state and church, and to educate the public on matters relating to nontheism.

A concerned local resident reported that on January 26, 2017, coaches from East Carter High School and West Carter High School joined hands in prayer with their teams and cheerleaders after a basketball game. An image of the two teams praying with their coaches was posted on the West Carter High School official Facebook¹ page with the caption: "East and West ball players, cheerleaders and coaches joined together for prayer after the game. What a way to end the game! #cometpride #wearecartercounty." Please see the attached image.

We ask that Carter County School's employees cease participating in prayer with students, and that the District's social media pages not be used to endorse religion.

It is unconstitutional for public school employees to pray with their students.

It is illegal for public school athletic coaches to lead or participate in team 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, 308 (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 . . .

¹ The page's "About" section states: "This is the official WCHS Facebook page created by WCHS administration."

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) (finding 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 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.*

These coaches’ conduct was unconstitutional because they endorsed and promoted religion while acting in their official capacities as school district employees. Certainly, they represent their schools and their teams when they act in their official role as basketball coaches. Therefore, they cannot lead or participate in prayer, nor can they organize or advocate for students to lead prayer. When a public school employee joins in prayer, they effectively endorse religion on the District’s behalf.

The school’s social media presence may not be used to promote religion.

In order to observe the strictures of the Establishment Clause, “a school 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)). Many federal courts around the country have prohibited religious messages or conduct by school employees. See, e.g. *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011) (restricting teacher's display of religious posters in the classroom), cert. denied, 132 S.Ct. 1807 (2012); *Lee v. York*, 484 F.3d 687 (4th Cir. 2007) (upholding school district's removal of religious postings on classroom bulletin boards). *Roberts v. Madigan*, 702 F. Supp. 1505, 1513 (D. Colo. 1989), aff'd, 921 F.2d 1047 (10th Cir. 1990) (upholding school district requirement that a teacher refrain from reading the Bible silently during reading period and displaying other religious items in his classroom).

Furthermore, the federal courts have upheld restrictions on the posting of religious materials by government entities because such restrictions exist to avoid an Establishment Clause violation. The Ninth Circuit Court of Appeals has stated that the "government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it." *Tucker v. Department of Education*, 97 F.3d 1204, 1214 (9th Cir. 1996); see also *Berry v. Department of Social Services*, 447 F.3d 642, 651 (9th Cir. 2006) ("materials posted on the walls of the corridors of government offices may be interpreted as representing the views of the state.")

In *Berry*, the court upheld restrictions on displays of religious materials in workspaces, even private cubicles or offices, because public access to the area could cause someone to "reasonably interpret the presence of visible religious items as a government endorsement of religion." *Berry*, 447 F.3d at 652. These restrictions clearly extend beyond the brick and mortar. They are just as applicable to the District's webpage and any social media pages, including those utilized by school employees, which a reasonable viewer would assume represents the views of the school district these employees represent.

Conclusion.

We ask that Carter County Schools commence an investigation into the complaint alleged and take immediate action to stop any and all school-sponsored prayers occurring within any District athletic programs. Furthermore, any posts on the District's social media pages promoting religion should be removed and the staff member(s) responsible should be counseled that such conduct is not to be repeated in the future. Please inform us in writing of the steps you are taking to remedy this violation of the First Amendment.

Sincerely,



Colin E. McNamara, Esq.
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation

Enclosure



West Carter High School



January 26 at 8:18pm · 🌐

East and West ball players, cheerleaders and coaches joined together for prayer after the game. What a way to end the game! #cometpride #wearecartercounty



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