

FREEDOM FROM RELIGION *foundation*

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SENT VIA EMAIL AND U.S. MAIL

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Re: Unconstitutional Baptism of Heritage High School Football Players

Dear Attorney Wiggins:

I am writing on behalf of the Freedom From Religion Foundation (FFRF). You recently corresponded with one of our attorneys, Madeline Ziegler, about religious literature distributions in Catoosa County Public Schools (CCPS). We appreciate your ongoing attention regarding those issues. Unfortunately, we must write again to object to an egregious constitutional violation that occurred at Heritage High School (HHS). If you no longer represent the district, please let me know.

We received reports recently that several football players were baptized on HHS property after school on September 14, 2016. A video posted on social media shows the students being baptized and the head football coach leading the event with opening and closing remarks.

The video shows a large group of students and several adults standing around a large utility tub of water on school property. The head coach opens the event with a speech to the students preparing to be baptized. He then gives the floor to another adult, who delivers what is basically a baptism sermon—quoting bible verses and encouraging the students in washing away their sins and living their Christian faith.

The video then shows another adult who indicates, “Coach has given me the honor to baptize you guys,” and goes on to baptize the students one by one, “in the name of the Father, Son, and Holy Spirit.” After the students have been baptized, the coach closes with remarks to the students, encouraging them to make a decision every day to “walk towards Him.”

We were very sorry to learn of the untimely, tragic death of a recent HHS graduate. We understand that this event may have been organized as a memorial to her. While we sympathize with the CCPS losing a beloved member of its community, it is inappropriate for a public school district to use this moment to proselytize students by organizing a team baptism. It is equally inappropriate and in fact unconstitutional for coaches to have

participated, even if students or the FCA organized the baptism.

As you are already aware, it is well settled that public schools may not advance or promote religion. Courts have consistently held that it is illegal for a public school to organize, sponsor, or lead religious activity at public high school athletic events, such as football practice. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2001); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962).

It is also illegal for coaches to organize or participate in religious activities with students, including baptisms. Nor can coaches allow religious leaders to gain unique access to students during school-sponsored activities. When baptisms take place directly before or after a team football practice, on school property, with coaches' participation or leadership, any reasonable student would perceive these activities to be unequivocally endorsed by their school.

Federal courts have specifically held public school coaches' participation in their team's religious activity 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 (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 stated that the coach's involvement 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." *Borden*, 523 F.3d at 174. 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). Organization of and/or participation in a team baptism are clearly prohibited.

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. *See id.*

Neither can the Constitution's prohibition against school-sponsored religious exercise be overcome by claiming such activities are "voluntary." As the Supreme Court said in *Engel*, "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause" 370 U.S. at 430. In *Schempp*, the Court said the offending religious practices were not "mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of

unconstitutionality under the Establishment Clause.” 374 U.S. at 224-25. It makes no difference if the coach required players to opt-in to the baptism. *See Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981)(Finding required express written permission by parents for students to participate in prayer did not cure Establishment Clause violations). Even if coaches and staff aren’t forcing players to get baptized, “[a] school risks violation of the Establishment Clause if any of its teachers’ activities gives the impression that the school endorses religion.” *Marchi v. Bd. of Cooperative Educ. Services*, 173 F.3d 469, 477 (2d Cir. 1999).

Such “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents ‘that they are outsiders, not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2000)(quoting *Lynch v. Donnelly*, 465 U.S. at 688)(O’Connor, J., concurring). The promotion of religion by school staff undeniably turns any non-believing and non-Christian HHS student into an outsider.

This is especially problematic in the context of athletics, given the pressure players feel to conform to coaches’ expectations so as not to disappoint coaches or hurt their standing on the team. Student athletes are inclined to mirror the actions of team leaders to garner their favor. By leading and participating in these events, coaches send a clear message that the athletic staff approves of these activities.

We understand that helping students to cope with the terrible death of a peer is a difficult and sensitive issue. There are many appropriate ways for school staff to honor this former student that would not run afoul of the law. But coaching staff organizing and participating in a baptism for students on school property is clearly unconstitutional.

We request that the district investigate and take the appropriate steps to ensure there will be no further illegal religious events, including team baptisms, during school-sponsored activities. Coaches and school staff should be instructed that they can neither organize nor participate in religious activities with students while acting in their official capacity.

Please reply detailing the steps being taken to bring CCPS into compliance with the First Amendment. Thank you for your time and attention to this matter.

Sincerely,



Elizabeth Cavell
Staff Attorney