

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

December 2, 2019

SENT BY EMAIL AND MAIL TO:

gary.howell@wvhouse.gov

The Honorable Gary Howell
Room 213E, Building 1
State Capitol Complex
Charleston, WV 25305
Re: Mineral County Schools coach prayers

Dear Delegate Howell:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to clear up some misunderstandings in your November 22, 2019 press release regarding FFRF's recent letter to Mineral County Schools. As you recall from that letter, FFRF is a nationwide nonprofit organization with more than 30,000 members, including many members in West Virginia.

We appreciate your desire to ensure that the U.S. Constitution is upheld and obeyed by all public officials, from teachers and school boards up to state and federal legislators. We agree, and that is precisely why FFRF exists: to uphold and defend the First Amendment. I write because we share this common ground but also because your November 22 press release misunderstands two core concepts of that Constitution and FFRF's fight to uphold it. Given your zealous defense of that document, we assume you'll want to correct the record.

1. Separation of state and church is well-settled constitutional doctrine and the only guarantee for true religious liberty.

There is no freedom *of* religion without a government that is free *from* religion. A secular government is the only way to truly protect religious liberty for every citizen. When the government can coerce, demand, or even recommend or intimate that an American pray in a certain way or on a certain day, the religious freedom we all hold most dear is violated. Put another way, our government has no power to declare or recommend what is right, correct, or orthodox in matters of religion. Or, as the Supreme Court held, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be

orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”¹

The phrase “separation of church and state,” originates with President and Founding Father Thomas Jefferson in his Letter to the Danbury Baptists, reassuring them that “I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church & State.”² The Supreme Court of the United States has frequently based rulings on this bedrock principle of our constitutional republic—that state and church must remain separate. The Court first adopted the metaphorical wall in 1878, and again in 1947, 1948, 1961 (three times), 1962, 1963, 1968, 1973, 1977, 1982, and again and again in countless concurrences and dissents.³

Your argument also falters in that many of the rights we hold dear are not explicitly enumerated in the Constitution. The right to a fair trial, for example, does not appear in the Constitution, but we know that it exists because of the requirements of the Fourth, Fifth, Sixth, Seventh, and Eighth Amendments. Fortunately, the First Amendment, through its text and long-standing Supreme Court precedent, mandates that our American system requires a strong separation of state and church.

The “separation of church and state” is embodied in our Constitution, which was the first to situate power in the people, not a deity. That “wall of separation” is an American original. It is an American invention. When you argue that the principle is not in the Constitution, you simultaneously mislead the public and promote a deeply anti-American sentiment.

2. Government employees, such as public school coaches, may not wield the authority of their positions to push religious practices.

The central point of my letter is simple: government employees may not use government authority⁴—as coaches do when they participate in student prayer—to

¹ *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added).

² <https://www.loc.gov/loc/lcib/9806/danpre.html>.

³ See *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984); *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 122–3 (1982); *Wolman v. Walter*, 433 U.S. 229, 236 (1977), overruled by *Mitchell v. Helms*, 530 U.S. 793 (2000); *Comm. For Pub. Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756, 761 (1973); *Epperson v. State of Ark.*, 393 U.S. 97, 106 (1968); *Engel v. Vitale*, 370 U.S. 421, 425 (1962); *Torcaso v. Watkins*, 367 U.S. 488, 492 (1961); *Braunfeld v. Brown*, 366 U.S. 599, 604 (1961); *McGowan v. Maryland*, 366 U.S. 420, 443 (1961); *McCullum v. Bd. of Educ.*, 333 U.S. 203, 211 (1948); *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947); *Reynolds v. U.S.*, 98 U.S. 145, 164 (1878).

⁴ Coaches of public schools’ sports programs get paid with public tax dollars. Football coaches are clearly government employees, and they exercise great authority over student athletes.

establish, endorse, or promote religion. This rule actually protects the religious liberty of students.

Your press release suggests the opposite, but admonitions that West Virginia's citizens must "exclude all public displays of religion" or that they "must abide by [FFRF's] beliefs" are also conspicuously absent from my letter.

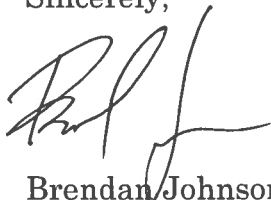
Students are free to pray in public schools so long as they don't disrupt the education of others. When they are told to pray, or when coaches make it clear that they want students to pray, the religious freedom of those students has been violated by the government.

When coaches pray over students—who presumably want nothing more than to succeed as athletes and get playing time—the coercive element becomes an "attempt to employ the machinery of the State to enforce a religious orthodoxy."⁵ Students cannot be forced to make the choice between praying and securing approval in their coaches' eyes, as appears to be the case when coaches participate in team prayers.

Finally, when you use the prestige and authority of your public office, granted to you by the People, to opine publicly on how many people should be "joining hand-in-hand in prayer,"⁶ you step over the same line as the coaches did in Mineral County.

In closing, before putting words in others' mouths, please remove your foot from yours. And don't call me a godless Hollywood elite. I'm from Montana.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brendan Johnson', with a stylized flourish at the end.

Brendan Johnson, Esq.
Robert G. Ingersoll Legal Fellow
Freedom From Religion Foundation

⁵ *Lee v. Weisman*, 505 U.S. 577, 592 (1992).

⁶ http://www.wvlegislature.gov/News_release/pressrelease.cfm?release=2687.