

FREEDOM FROM RELIGION *foundation*

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September 30, 2014

SENT BY MAIL AND EMAIL TO: hiled@lickingvalley.k12.oh.us

Mr. David Hile
Superintendent, Licking Valley Local School District
1379 Licking Valley Road, N.E.
Newark, OH 43055

Re: Athletic Team Prayers

Dear Superintendent Hile:

I am writing again on behalf of the Freedom From Religion Foundation (FFRF). We are still awaiting your response to the letter sent on September 23, 2014 concerning Licking Valley High School's band. Unfortunately, another serious constitutional violation occurring in your district was reported to us, this time involving Licking Valley High School's football team.

It is our information and understanding that Licking Valley High School's (LVHS) football coach, Randy Baughman, participated in prayer with his students this past season. Please see the attached image taken from the "Licking Valley High School Football Team's" Facebook page. It is our understanding that a student on the team led the prayer. We understand that Coach Baughman and other members of the coaching staff bowed their heads and participated. We are concerned that this practice continues this season.

While students may wish to engage in prayer on their own, school staff, including coaches, cannot participate or encourage such religious activities.

The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Abington Township Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declared unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (declared prayers in public schools unconstitutional); *see also Lee v. Weisman*, 505 U.S. 577 (1992) (ruled prayers at public high school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturned law requiring daily "period of silence not to exceed one minute ... for meditation or daily prayer."). In all of the aforementioned cases, the federal courts have struck down prayer in public schools because it constitutes a government advancement or endorsement of religion, which violates the Establishment Clause of the First Amendment.

Moreover, the Supreme Court has struck down pre-game invocations that signal school

endorsement even when led by a student. See *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (striking down a school policy that authorized students to vote on whether to hold a prayer at high school football games). Likewise, a high school coach praying with student-players at a “regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308. The Supreme Court has stated that “[r]egardless of the listener’s support for, or objection to, the message, an objective [high school] student will unquestionably perceive the [religious message] as stamped with her school’s seal of approval.” *Id.*

Furthermore, a public school coach’s participation in a team’s prayer circle is illegal and inappropriate. Federal courts have specifically held public school coaches’ participation in their team’s prayer circles 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 (U.S. Mar. 2, 2009) (No.08-482) (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 held the high school football coach, who had an extensive history of organizing, leading and participating in prayers before games, had violated the Establishment Clause by “bow[ing] his head and tak[ing] a knee while his team pray[ed].” *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. See *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.* The Fifth Circuit in *Doe* also rejected the argument that a school district could not “prevent its employees from participating in student prayers without violating their employees’ rights to the free exercise of religion, to association, and to free speech and academic freedom.” *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 406 (5th Cir. 1995). It noted that “the principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations imposed by the establishment clause.” *Id.* (quoting *Lee*, 505 U.S. at 586-87).

As you are aware, LVHS is home to a diverse array of families, including parents and students who are non-Christian and non-religious. Recent data now puts the “Nones,” those with no religion, at one in five U.S. adult citizens, and one in three young adults.

(Pew Forum on Religion and Public Life, October 2012). The nonreligious, at nearly 20% of the population, is the second-largest segment of the population, second only to Roman Catholics.

Licking Valley Local School District must take action to ensure that coaches do not lead, organize, invite, encourage, or participate in prayers with their teams this upcoming school year. Coaches must be informed of their legal obligations and school administrators should be directed to monitor school events to ensure compliance. We ask that you inform us promptly in writing of the steps you are taking to address this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSM', with a long horizontal line extending from the top left of the signature.

Rebecca S. Markert
Staff Attorney

RSM:jki

Enc.

Licking Valley High School Football's Photos

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Licking Valley High School Football
Ty Griffith leading the team in prayer. — at Licking Valley High School.
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From: Licking Valley High School
Football's Photos in P.A.W. day 2013
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