

FREEDOM FROM RELIGION *foundation*

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May 20, 2015

SENT VIA EMAIL & U.S. MAIL TO: tenglish@nbbroncos.net

Thomas A. English
Superintendent
North Branch Area Schools
P.O. Box 3620
North Branch, MI 48461

Re: Unconstitutional Coach-Led Prayer

Dear Mr. English:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in North Branch High School. We were contacted by a concerned member of the community. FFRF is a national nonprofit organization with 22,500 members across the country, including 609 members in Michigan. FFRF's purpose is to protect the constitutional principle of separation between state and church.

We understand that Willy Deshetsky is the North Branch High School varsity softball coach. Our complainant reports that Coach Deshetsky leads the softball team in prayer, on the softball field, before each game. Photos of Coach Deshetsky praying with the team have been enclosed with this letter.

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).

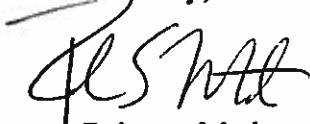
In *Borden*, the Third Circuit Court of Appeals held the high school football coach’s extensive history of organizing, leading and participating in prayers before games was unconstitutional because it violated the Establishment Clause. *Borden*, 523 F.3d at 174. In that case, the court stated that the 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 Deshetsky’s conduct is unconstitutional because he endorses and promotes his religion when 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 varsity softball coach. 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 North Branch Area School 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,



Rebecca Markert
Staff Attorney

RSM: lkd

Enclosures

