

FREEDOM FROM RELIGION *foundation*

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December 12, 2019

SENT VIA EMAIL & U.S. MAIL

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Douglas Killian
Superintendent
Pflugerville ISD
1401 W. Pecan St.
Pflugerville, TX 78660

Re: Unconstitutional coach participation in prayer and promotion of religion

Dear Superintendent Killian:

First, thank you for your timely and courteous response to my previous letter on behalf of the Freedom From Religion Foundation (FFRF). I appreciate you granting these matters your time and attention. I write again because FFRF has received an additional complaint regarding unconstitutional actions by Pflugerville ISD employees.

A concerned community member recently contacted us to report that Pflugerville Connally High School basketball coaches have been leading their teams in prayer (see enclosure). We also understand that Coach Washington established the Fellowship of Christian Athletes (FCA) program at Connally High School. In an online FCA video, Coach Washington states that “[t]here was no FCA here, and I’m not gonna apologize for trying to pour it into the young kids’ life . . . Basketball won’t be a part of your life forever, but Jesus will.”¹ We are also informed that Coach Washington and other coaches have been allowing FCA representatives to attend official basketball practices, where they proselytize to and pray with the teams.

We write to request that the district take steps to end these practices immediately. The First Amendment prohibits coaches from praying with players, participating in student meetings with outside religious groups, and from transforming their tax-funded athletic programs into evangelical organizations, as appears to be the case with the Connally High School basketball program.

Coach Participation in Student Prayer

It is illegal for public school athletic coaches to lead their teams in prayer. The Supreme Court has continually ruled that public school-sponsored prayer is unconstitutional. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (“[A]n 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); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203

¹ *Connally Basketball FCA 11-21-19.mov*, <https://bit.ly/2t0FFmk>.

(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 *Doe v. Duncanville Indep. Sch. Dist.*, the Fifth Circuit—under whose jurisdiction Texas falls—found strikingly similar facts to those at issue here to be unconstitutional school-sponsored prayer. 70 F.3d 402, 409 (5th Cir. 1995). There, the court held unconstitutional a basketball coach's participation in student prayer circles before and after games because it "improperly entangle[d] [the school] in religion and signal[ed] an unconstitutional endorsement of religion." *Id.* at 406. When Connally High School's basketball coaches lead students in prayer, they expose the district to legal liability for violation of the First Amendment.

Public school coaches must refrain from leading students in prayer and also from participating in students' prayers and religious organizations. It is unconstitutional for public school employees to participate in the religious activities of their students, like FCA meetings. *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). The Connally High School basketball program seriously transgresses constitutionally norms as currently run.

FCA Meetings During Official Basketball Practices

Neither may the coaches grant outside adults access to school-sponsored activities to proselytize to students. It is well settled that public schools may not advance or promote religion. *See generally, Lee*, 505 U.S. 577; *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Ark.*, 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). Moreover, "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe*, 530 U.S. at 310 (internal quotations omitted). In *Lee*, the Supreme Court extended the prohibition of school sponsored religious activities beyond the classroom to all school functions, holding prayers at public high school graduations to be an impermissible establishment of religion. 505 U.S. at 598. As noted above, coaches may not constitutionally participate in students' religious meetings. *See Mergens*, 496 U.S. at 253. Turning a basketball practice into a religious meeting goes much further than mere participation and, therefore, severely exacerbates the illegality of these actions. Thus, the religious recruitment of Pflugerville ISD students during mandatory sports practices violates the Establishment Clause.

When public school employees—here, coaches—subject students to religious proselytization, the district endorses a religious message and "employ[s] the machinery of the state to enforce a religious orthodoxy." *Lee*, 505 U.S. at 592. The "[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 an accompanying message to adherents that they are insiders, favored members of the political community." *Santa Fe*, 530 U.S. at 309–10 (internal quotations omitted). This includes the 24% of all Americans, and 38% of Americans born after 1987, who do not identify with any religion.² Even if the FCA meetings were held outside of official team practices, coach participation would be unconstitutional. *See Mergens*,

² Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf.

496 U.S. at 253 (finding that public school faculty may only be at student-led religious meetings in a “nonparticipatory capacity”).

It is inappropriate and unconstitutional for the district to offer religious leaders unique access to befriend and proselytize students during school events and on school property. No outside adults should be provided carte blanche access to minors—a captive audience—in a public school. This predatory conduct is inappropriate and should raise many red flags. The district cannot allow its schools to be used as recruiting grounds for churches during school sponsored events.

Allowing church representatives regular—or even one-time—access during school-sponsored events to proselytize and recruit students for religious activities violates the Establishment Clause. The courts have protected public school students from overreaching outsiders in similar situations. *See, e.g., Berger v. Rensselaer School District*, 982 F.2d 1160 (7th Cir. 1993) (holding that distribution of bibles by Gideons in school violated Establishment Clause). Courts are willing to grant injunctions against schools for their complacency in such situations. *See, e.g., Roark v. South Iron R-1 Sch. Dist.*, 540 F. Supp.2d 1047, 1059 (E.D. Mo., 2008); upheld in relevant part by 573 F.3d 556, (8th Cir. 2009) (holding that school policy allowing evangelical Christian organization to distribute bibles in school violated Establishment Clause). This active, in-person contact with students is different from cases in which religious groups have been allowed to passively distribute literature to students or to send flyers to parents. *See, e.g., Peck v. Upshur Cnty. Bd. of Ed.*, 155 F.3d 274, 281 (4th Cir. 1998) (upholding school board’s allowance of passive distribution of religious materials in part because the school board “preclude[d] religious speakers from delivering their messages to Upshur County students face-to-face.”).

The conduct of these coaches is unconstitutional because it endorses and promotes religion while acting in their official capacity. Certainly, the coaches represent the school and the team when acting in their role as coaches of the Connally High School Cougars. Therefore, when they participate in team prayer and subject student athletes to proselytization by outside adults at basketball practice, they endorse religion on the district’s behalf.

We ask that Pflugerville ISD take immediate action to stop any and all school-sponsored prayers occurring at any district athletic programs, as well as coach participation in student religious organizations and granting outside adults access to evangelize to students. Please inform us in writing of the steps you are taking to remedy these serious violations of the First Amendment.

Sincerely,



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

Enclosure

