

# FREEDOM FROM RELIGION *foundation*

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

October 2, 2018

**SENT VIA EMAIL & U.S. MAIL: [barrett.waller@toombs.k12.ga.us](mailto:barrett.waller@toombs.k12.ga.us)**

Barry Waller  
Superintendent  
Toombs County Schools  
117 East Wesley Avenue  
Lyons, GA 30436

Re: Unconstitutional Religious Promotion in Toombs County High School Football Program

Dear Superintendent Waller:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Toombs County Schools. FFRF is a national nonprofit organization with more than 32,000 members across the country, including more than 500 members and a chapter in Georgia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned resident has reported that Toombs County High School football coaches have been promoting religion to students. Our complainant shared with us a video posted on Facebook that shows coaches making religious statements and initiating a religious chant with students after a game.<sup>1</sup> In the video, each coach makes a statement before reciting the phrase, "God is good," to which the students respond, "all the time." Each coach then says, "all the time" and the students respond, "God is good." This is repeated a dozen times. The first coach shown told students to "know who you are and know He's given you purpose," while pointing to the sky. After each of the coaches have repeated this religious phrase, one of the coaches then says, "Pastor Toole, pray us out." Pastor Toole then led the team in prayer,

Father, there's no way to be in a situation like this and not just give you thanks for your love and your goodness... We just thank you. Father, I thank you for these young men. I thank you for what you're doing in them, God, and we celebrate this win, but, God, I thank you that I see wins every day. And God as you work in them and you show them purpose in their lives beyond, as much as we love this game, beyond this game. And Lord, I just thank you for every one of them, these coaches, their families, the sacrifices they make, God, that many times goes unnoticed. Lord, I just thank you for that. Lord, I thank you for these parents, these families, these fans... father, our community, God, who surround us with love, and God, who give us the opportunity to do this... Let us never take it for granted, let us cherish it, and God, I just pray for your protection on everyone as we return home. And God, in everything that we do it... so that you receive all glory. In Jesus' name, amen.

We understand that Pastor Toole is a local pastor who the school employs to pray with and promote religion to the team. We also understand that the Toombs County High School football program regularly posts religious messages and bible verses on its official Twitter account. Please see the enclosed screenshots.

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<sup>1</sup> <https://www.facebook.com/starr.thompson26/videos/10213067651550767>

### **Unconstitutional Coach-led Prayer and Chaplain**

It is illegal for public school athletic coaches to lead their teams in prayer or religious chants. 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, 308 (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”); *Sch. Dist. of Abington Twp. 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) (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); *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 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.*

This conduct is unconstitutional because these coaches are endorsing and promoting religion while acting in their official capacity as school district employees. Certainly, they represent the school and the team when they act in their official role as coaches of the Toombs County High School football team. Therefore, they cannot lead their team in prayer and they cannot organize or advocate for students to lead team prayer. When public school employees acting in an official capacity organize and advocate for team prayer, they effectively endorse religion on the District’s behalf.

Furthermore, public schools cannot appoint or employ a chaplain, seek out a spiritual leader for students, or agree to have a volunteer teach other people's children that character centers on religious belief, because public schools may not advance or promote religion. TCS cannot allow non-school adults access to the children in its charge, and it certainly cannot grant that access to ministers seeking to grow and target their religious ministries using students. "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 (quoting *Lee v. Weisman*, 505 U.S. at 589). This is a violation of both students' and parents' rights.

This school endorsement of Christianity is particularly troubling for those parents and students who are non-religious or not Christian. 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 accompanying message to adherents that they are insiders, favored members of the political community.'" *Id.* (quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O'Connor, J., concurring).

### **Unconstitutional Promotion of Religion on Social Media**

It is well settled that public schools may not advance, prefer or promote religion. Advancing, preferring, and promoting religion is exactly what a school district does when its employees post religious messages on official public social media pages. These proselytizing messages give the appearance of District endorsement of religion over nonreligion, and Christianity over all other faiths. It also conflicts with personal religious and nonreligious views of many District students and families, including the 38% of Americans born after 1987 who identify as nonreligious.<sup>2</sup>

We ask that Toombs County Schools commence an immediate investigation into the complaints alleged and take action to stop any and all school-sponsored prayers occurring within District athletic programs. TCS must ensure that it is no longer allowing religious leaders to have access to its students or promoting religion on official social media pages. The team may no longer employ Pastor Toole or anyone else as a team chaplain. Please inform us in writing of the steps the District is taking to remedy these serious and flagrant violations of the First Amendment.

Sincerely,



Christopher Line  
*Patrick O'Reiley Legal Fellow*  
*Freedom From Religion Foundation*

Enclosures

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<sup>2</sup> 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](http://www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).



**Steven Toole**

*Coach and Team Chaplain*



## **Toombs Football**

@ToombsFootball1

Official twitter page for the Toombs  
County High School Bulldog Football  
Team #beadog #redbullets instagram [▶](#)  
[@toombsfootball1](#)

📍 Lyons, GA

[toombsathletics.com/football](https://toombsathletics.com/football)

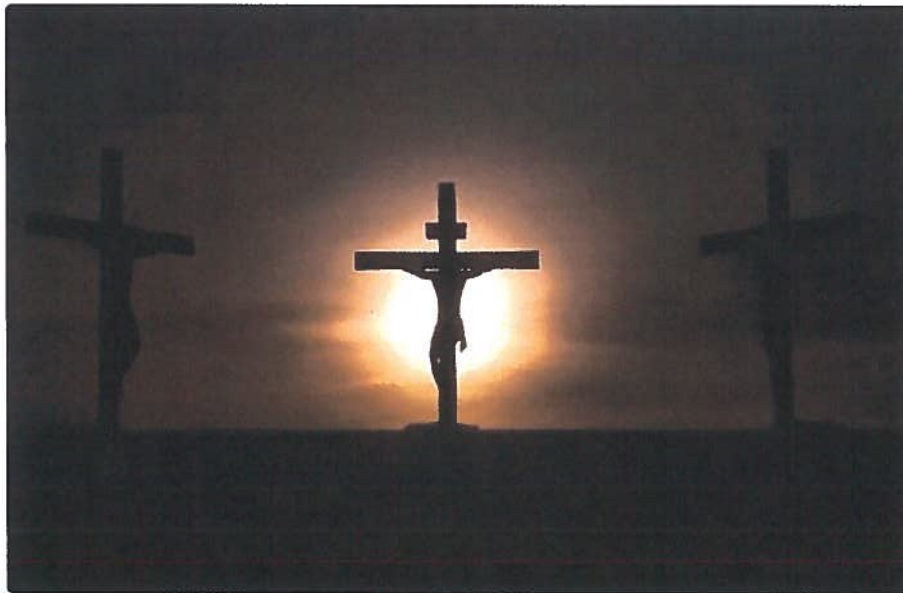
📅 Joined February 2017

↻ Toombs Football Retweeted



**Brian Blackmon** @BBlackmonTroy · Mar 27

I was reminded this morning that it wasn't Nails that held Jesus on the Cross. It was Love! #HolyWeek



💬 3    ↻ 67    ❤️ 198    ✉️

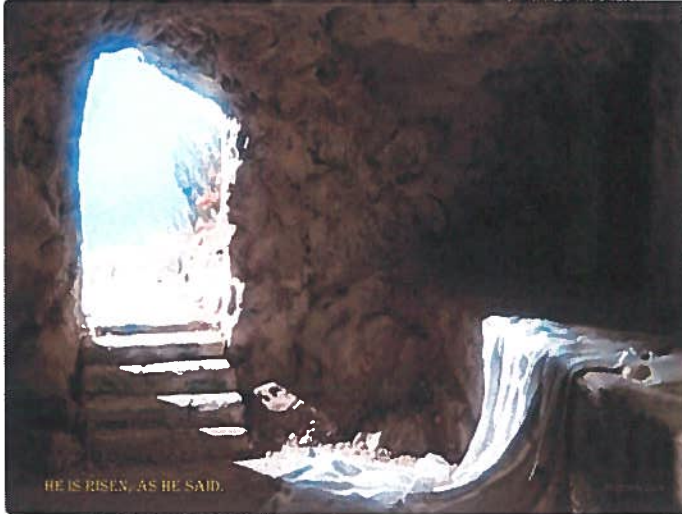


Toombs Football @ToombsFootball1 · Apr 1

Dog ✓: "Why do you look for the living among the dead. He is not here, He has risen." -Lk 24:5-6

Hallelujah, the tomb is empty! Jesus is alive!

Happy Easter!

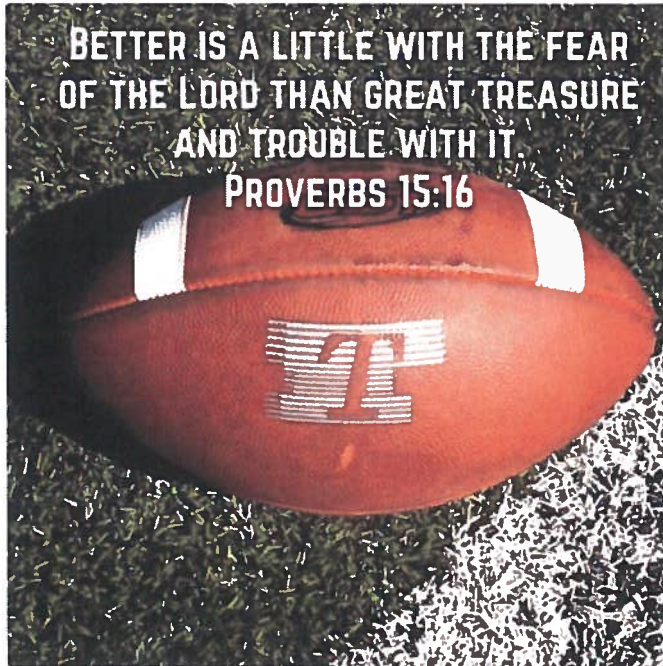


Toombs Football @ToombsFootball1 · Apr 20

DOG ✓: "Better is a little with the fear of the Lord than great treasure and trouble with it."

Proverbs 15:16 ESV

[bible.com/59/pro.15.16 e...](http://bible.com/59/pro.15.16)



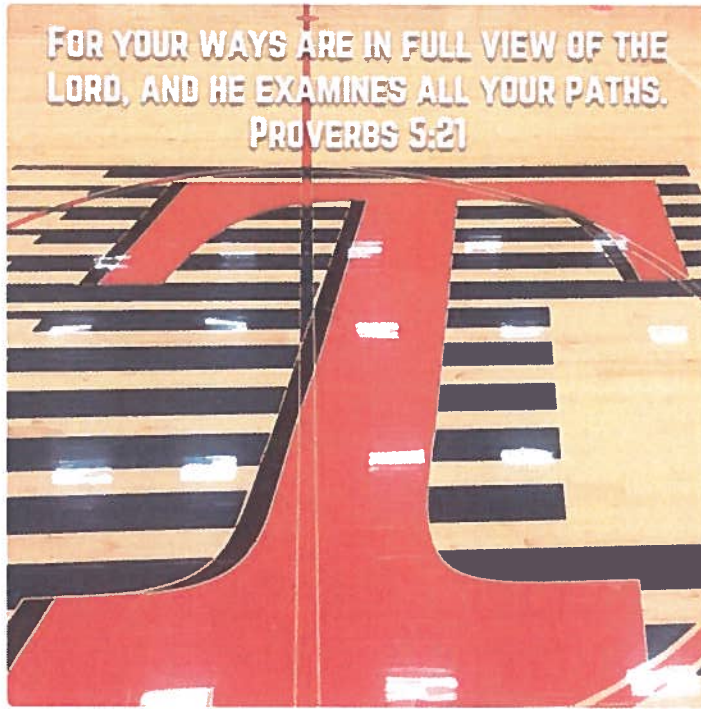


Toombs Football @ToombsFootball1 · Apr 26

DOG ✓: "For your ways are in full view of the Lord, and he examines all your paths."

Proverbs 5:21 NIV

[bible.com/111/pro.5.21.n...](https://bible.com/111/pro.5.21.n...) #climbThemountain



Toombs Football @ToombsFootball1 · May 15

DOG ✓: Be coachable! Embrace correction & discipline! "Those who disregard discipline despise themselves, but the one who heeds correction gains understanding."

Proverbs 15:32 NIV

[bible.com/111/pro.15.32...](https://bible.com/111/pro.15.32...) #climbThemountain #BeADOG #TCfamily



**Proverbs 15:32 Those who disregard discipline des...**

Those who disregard discipline despise themselves, but the one who heeds correction gains understanding.

bible.com



**Toombs Football** @ToombsFootball1 · May 16

DOG ✓: Stay HUMBLE! "Pride goes before destruction, a haughty spirit before a fall."

Proverbs 16:18 NIV

[bible.com/111/pro.16.18...](http://bible.com/111/pro.16.18...) #climbThemountain #BeADOG #TCfamily



**Proverbs 16:18 Pride goes before destruction, a ha...**

Pride goes before destruction, a haughty spirit before a fall.

[bible.com](http://bible.com)



**Toombs Football** @ToombsFootball1 · Jun 11

"Greater love has no one than this, that someone lay down his life for his friends." John 15:13 [youtu.be/b7U0mLP9g\\_c](https://youtu.be/b7U0mLP9g_c) via @YouTube



**Are they really your friends?**

Trent Shelton dropping wisdom

[youtube.com](https://youtube.com)

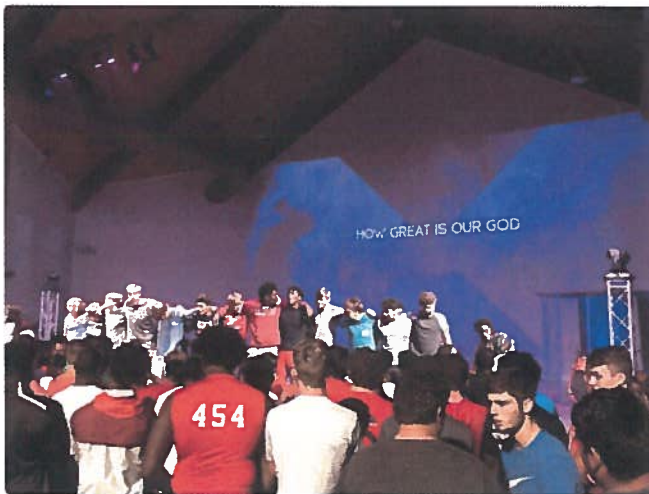
1 2 7



**Toombs Football** @ToombsFootball1 · Jul 16

Sing with me...

#ballersforChrist #climbThemountain #beadog



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