

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG
April 4, 2019

SENT VIA EMAIL & U.S. MAIL: lrcushman@animask12.net

Loren Cushman
Superintendent
Animas Public Schools
P.O. Box 85
Animas, NM 88020

Re: Unconstitutional Religious Promotion in Animas Public Schools

Dear Superintendent Cushman:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Animas Public Schools (APS). FFRF is a national nonprofit organization with more than 31,000 members across the country, including members and a local chapter in New Mexico. 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 APS community member has reported that the head coach of the Animas High School boys basketball team has been promoting religion to his team. Our complainant reports that on February 27, 2019, the coach had his players wear t-shirts that said, "I can do all things though Christ who strengthens me" before a playoff game. Our complainant also reports that the coach has been holding bible studies with players.

It is a violation of the Establishment Clause for coaches to organize a bible study or endorse a religious message to students. This "[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 [sic] that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-10 (2001)(quoting *Lynch v. Donnelly*, 465 U.S. at 668)(O'Connor, J., concurring). The basketball program's promotion of religion over non-religion undeniably turns any non-believing student, staff member, or fan into an outsider.

Federal courts have ruled public school coaches and athletic personnel must not promote religion. *See, e.g., Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008) (petition for cert. filed, U.S. Oct. 2008) (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 court stated that the coach's involvement in prayer by 'taking a knee' and 'bowing his head' during 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).

Please note that it does not matter whether some players asked the coach to lead a bible study or whether wearing the religious t-shirts is optional. Courts have summarily rejected arguments that voluntariness excuses a constitutional violation. *See, generally, Lee*, 505 U.S. at 596 (“It is a tenet of the First Amendment that the State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.”); *Abington Sch. Dist.*, 374 U.S. at 288 (Brennan, J., concurring) (“Thus, the short, and to me sufficient, answer is that the availability of excusal or exemption simply has no relevance to the establishment question”); *Mellen v. Bunting*, 327 F.3d 355, 372 (4th Cir. 2003) (“ . . . VMI cannot avoid Establishment Clause problems by simply asserting that a cadet’s attendance at supper or his or her participation in the supper prayer are ‘voluntary.’”).

We ask that Animas Public Schools commence an investigation into the complaint alleged and take immediate action to ensure that religion is no longer being promoted in any District athletic program. Please inform us in writing of the steps the District takes to remedy this violation of the First Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a long horizontal flourish extending to the right.

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