

FREEDOM FROM RELIGION *foundation*

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May 29, 2019

SENT VIA EMAIL AND U.S. MAIL: john.dickey@wcbek12.org

Mr. John Dickey
Superintendent
Washington County Schools
P.O. Box 1359
Chatom, AL 36518

Re: Unconstitutional Baptism of Washington County High School Football Players

Dear Superintendent Dickey:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation recently reported in Washington County Schools (WCS). FFRF is a national nonprofit organization with more than 31,000 members across the country, including more than members in Alabama. 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 WCS community members reports that several football players were baptized on WCS property after school on May 16, 2019. A video posted on social media shows the students being baptized and the head football coach participating and endorsing this religious exercise.¹ Please see the enclosed photos.

In the video, a man gives an introduction where he notes that “none of this would be going on without head coach Devon Roberts. Now I can tell you that Devon Roberts is not normal. This is not going on all over the United States.”² The man then begins baptizing students.

We write to ensure that WCS is no longer including religious rituals during school-sponsored activities. It is inappropriate for a public school district to proselytize students by organizing a team baptism. It is equally inappropriate and unconstitutional for coaches to have participated, even if students or the FCA organized the baptism.

It is well settled that public schools may not advance or promote religion. Courts have consistently held that it is illegal for a public school to organize, sponsor, or lead religious activity at public high school athletic events, such as football practice. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2001); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 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). In *Lee v. Weisman*, 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 an impermissible establishment of religion. As a school-sponsored event, football practice cannot include any endorsement of religion or religious rituals.

It is also illegal for coaches to organize or participate in religious activities with students, including baptisms. Nor can coaches allow religious leaders to gain unique access to students

¹ www.facebook.com/baileythill/videos/10218826022665636/.

² *Id.*

during school-sponsored activities. When baptisms take place directly before or after a team football practice, on school property, with coaches' participation or leadership, any reasonable student would perceive these activities to be unequivocally endorsed by their school.

Federal courts have specifically held public school coaches' participation in their team's religious activity 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 (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) (declaring basketball coach's participation in student prayer circles an unconstitutional endorsement of religion). In *Borden*, the Third Circuit Court of Appeals stated that the coach's involvement 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." *Borden*, 523 F.3d at 174. 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). Organization of and/or participation in a team baptism are clearly prohibited.

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. *See id.*

Such "[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 Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309–10 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. at 688) (O'Connor, J., concurring). The promotion of religion by school staff undeniably turns any non-believing and non-Christian WCS student into an outsider.

Neither can the Constitution's prohibition against school-sponsored religious exercise be overcome by claiming such activities are "voluntary." As the Supreme Court said in *Engel*, "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of students is voluntary can serve to free it from the limitations of the Establishment Clause" 370 U.S. at 430. In *Schempp*, the Court said the offending religious practices were not "mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause." 374 U.S. at 224–25. It makes no difference if the coach required players to opt-in to the baptism. *See Karen B. v. Treen*, 653 F.2d 897 (5th Cir. 1981) (Finding required express written permission by parents for students to participate in prayer did not cure Establishment Clause violations). Even if coaches and staff aren't forcing players to get baptized, "[a] school risks violation of the Establishment Clause if any of its teachers' activities gives the impression that the school endorses religion." *Marchi v. Bd. of Cooperative Educ. Services*, 173 F.3d 469, 477 (2d Cir. 1999).

This is especially problematic in the context of athletics, given the pressure players feel to conform to coaches' expectations so as not to disappoint coaches or hurt their standing on the team. Student athletes are inclined to mirror the actions of team leaders to garner their favor. By leading and participating in these events, coaches send a clear message that the athletic staff approves of these activities.

We request that the district investigate and take the appropriate steps to ensure there will be no further illegal religious events, including team baptisms, during school-sponsored activities. Coaches and school staff should be instructed that they can neither organize nor participate in religious activities with students while acting in their official capacity. Please reply detailing the steps being taken to bring WCS into compliance with the First Amendment. Thank you for your time and attention to this matter.

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

Enclosures



Washington County High School Football updated their cover photo.



May 16 at 11:57 PM · 🌐

