

FREEDOM FROM RELIGION *foundation*

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October 4, 2021

SENT VIA U.S. MAIL AND EMAIL

jcdunlop@baschools.org

Dr. Janet Vinson
Superintendent, Broken Arrow Public Schools
701 S. Main St.
Broken Arrow, OK 74012-4399

Re: Unconstitutional religious activity at football practice

Dear Dr. Vinson:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation that occurred at Broken Arrow High School in Broken Arrow, Oklahoma. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 150 members in Oklahoma. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters relating to nontheism.

We received a report that a number of football players were baptized on high school property a few weeks ago. Brian Preston, the student director at Battle Creek Church, posted a video to Facebook memorializing several baptisms that occurred on September 5, 2021, after a Broken Arrow High School football practice.¹ A screenshot is included with this letter. As Mr. Preston described the religious activity documented in the video, with the school as his backdrop, he confirmed the baptisms took place “after football practice, right here at Broken Arrow High School.” He explained that ten football team members “gave their life to Christ” and “those same students step[ped] forward in baptism in front of all their peers” after practice. Included in the video was a coach’s dunking in the baptismal tub, induced to “step foot into the baptism waters” after “he saw the faith in his players.” Mr. Preston rejoiced in witnessing “the team coming around each other taking a bold stand for Christ” and in God “drawing students to the baptism water.” The caption below the video proclaims: “Students made a public declaration of faith after football practice alongside one of their coaches.”

Public schools may not advance, prefer, or promote religion because the Establishment Clause of the First Amendment prohibits governmental entities from endorsing religion. *See 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). Courts have consistently held that public schools cannot 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). When religious events take place directly after a team football practice, on school property, with coaches’ participation, these activities are perceived by reasonable students to be endorsed by their school.

¹ <https://www.facebook.com/watch/?v=551677166097972>.

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 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 the school district had a right to adopt guidelines restricting this activity because of its concern about potential Establishment Clause violations. *See id.*

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." 374 U.S. at 224-25. Requiring players to opt-in to the baptism makes no difference. *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 are not 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).

The Constitution protects freedom of conscience but delegates the choice to the private sphere. *See Lee*, 505 U.S. at 589 ("[T]he design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere...."). When public high school football players are compelled to engage in religious activity with their team, the school has violated the Constitution and the trust of the players and their parents. The team was effectively a captive audience for the evangelists from Battle Creek Church when Broken Arrow High School provided the platform of a football practice. The misused authority of the football coaches and the expectations of compliance and conformity within the team environment did not allow the football players to choose to participate. The fact that a coach felt compelled to be baptized is probably the best example of the coercion induced by this religious spectacle sponsored by your public school on school property.

Religion is a divisive force in public schools. Fostering a religious viewpoint in a public high school sends an impermissible message to students that a certain religious belief is favored. *See Santa Fe Indep. Sch. Dist.*, 530 U.S. at 309-10 (“School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherent ‘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.’” *Id.* at 309 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 699 (1984) (O’Connor, J., concurring))). Sponsoring a Christian baptism alienates non-Christian students, families, teachers, and members of the public whose religious beliefs are inconsistent with the message being promoted, including the more than 43% of young Americans—those born after 1990, which is your student body—who are not religious.²

Broken Arrow High School endorsed Christianity with baptisms after football practice. Not only did this send a message of religious favoritism, the football team members were coerced into participating in a religious event. Even though school athletics may be tangential to a public school’s primary goal of secular education, the football program is controlled by Broken Arrow High School and restricted by the same constitutional requirements. The baptisms were an egregious violation of the required separation of church and state.

We request that the school district investigate the complaint alleged and take action to ensure there will be no religious events during school-sponsored activities. Coaches and school staff should be educated regarding their constitutional obligation to remain neutral toward religion while acting in their official capacities. Please respond in writing detailing the steps the district has taken to comply with the First Amendment so that we may notify the complainant of your actions.

Sincerely,



Karen M. Heineman
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation

Enclosure

² *America’s Changing Religious Landscape*, PEW RESEARCH CENTER (May 12, 2015), available at www.pewforum.org/2015/05/12/americas-changing-religious-landscape/.

