

FREEDOM FROM RELIGION *foundation*

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March 2, 2020

**SENT VIA EMAIL AND U.S. MAIL:
amitchell@tharringtonsmith.com**

Adam S. Mitchell, Esq.
Tharrington Smith, LLP
150 Fayetteville Street, Suite 1800
PO Box 1151
Raleigh, NC 27601

Re: Unconstitutional promotion of religion

Dear Mr. Mitchell:

I am writing on behalf of the Freedom From Religion Foundation to alert you to constitutional concerns in Duplin County Schools (the District). We appreciate your past cooperation in your representation of the District.

We received reports that Fellowship of Christian Athletes (FCA) Area Director Ken Lovell has been repeatedly granted access to the District's student athletes, particularly the football team, during school-sponsored events. We write to request that the District restrict access of outside adult religious leaders to its students during school-sponsored events.

Coaches may not 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 v. Weisman*, 505 U.S. 577 (1992); *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). As the Supreme Court has recognized, "the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310 (2000) (internal quotations omitted).

When public school employees—here, coaches—allow outside adults to subject students to religious proselytization, the District endorses a religious message, and it "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 35% of Americans who are not Christian.¹

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 conduct is inappropriate and should raise many red flags. The District cannot allow its schools to be used as recruiting grounds for religious groups during school sponsored events. Any school religious groups must be bona fide student clubs that are student-initiated and student-run.

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. 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.”).

It is especially important that coaches maintain arm’s length separation from the FCA and its events, given the FCA’s overt campaign to use coaches to promote Christianity to student athletes.² The FCA explicitly declares its

¹ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.

² *See To and Through the Coach*, FELLOWSHIP OF CHRISTIAN ATHLETES (March 13, 2019), <http://fcaresources.com/video/and-through-coach> (“[The FCA has] begun to take more strategy, more structure, more intentionality to ministry to the heart of the coach, to their family, and ultimately to their team. . . . Getting to [students] as a total person—witnessing to them and helping them develop as spiritual men and women as well.” “[Coaches] play the role as pastors. They play the role as parents. They play the role as mentor.”).

intention to get coaches “play the role as pastors,” which, if successful, would amount to the District’s clear violation of the Establishment Clause.

We ask that the District take immediate action to stop all access by religious organizations, including the FCA, to evangelize to students during school-sponsored events. Please inform us in writing of the steps the District will take to remedy these serious constitutional concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendan Johnson".

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

Enclosures

