

FREEDOM FROM RELIGION *foundation*

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

November 19, 2019

SENT VIA EMAIL AND U.S. MAIL: gavink@flaglerschools.com

Ms. Kristy Gavin
General Counsel
Flagler County Public Schools
1769 East Moody Blvd. Bldg. #2
Bunnell, FL 32110

Re: Flagler County Public School organizing and participating in worship event

Dear Ms. Gavin:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a serious constitutional violation that occurs each year in Flagler County Public Schools.

It is our understanding that each year, Flagler County Public Schools participates in a religious worship event called Football Sunday at the Palm Coast United Methodist Church. We understand that Superintendent James Tager, Flagler Palm Coast High School Principal Thom Russell and Mantanzas High School Principal Jeffery Reaves all participate in this religious worship service, and that this event is attended by members of both schools' football teams, coaches, cheerleaders, and band members.¹ We understand that both schools' bands perform at this event. Please see the enclosed screenshots from this year's event.

At last year's event, FPCHS head football coach Travis Roland said,

I was raised in a Christian household and we can't preach religion in high school, but this opportunity to invite them to come to church gives them the opportunity to hear the word. As a Christian man, I've done my job by at least giving them the open invitation.²

It is illegal for school administrators and coaches to organize or participate in religious activities with their students, including team visits to a church for a religious sermon. School officials may not use their position as public school employees to give religious leaders unique access to students. We request written assurances that the District will take appropriate corrective action to remedy this serious constitutional violation.

¹ <https://www.palmcoastobserver.com/photo-gallery/palm-coast-united-methodist-church-hosts-eighth-football-sunday-worship-service>

² <https://www.news-journalonline.com/news/20180820/flagler-churchs-football-sunday-service-brings-rivals-together>

As you are aware, 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 activities, including at public high school athletic events. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *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).

Federal courts have specifically held public school coaches' participation in their team's religious activities 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 held the high school football coach, who had a 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). Organization of and/or participation in a team visit to a church for a religious sermon are also clearly prohibited.

The Constitution's prohibition against school-sponsored religious exercise cannot 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 also makes no difference if the school requires parents to opt-in to religious practices. *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 students to attend a church service, "[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 enclosed images unquestionably give such an impression.

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 668) (O’Connor, J., concurring). The promotion of religious views by school staff turns any non-believing and non-Christian students into outsiders at their own school. This is especially problematic in the context of athletics, given the pressure players feel to conform to coaches’ expectations so as to not lose favor with the coaches or hurt their playing time.

We request that the District immediately investigate and take action to ensure that school administrators and coaches will not organize or participate in team religious events in the future. Superintendent Tager, Principal Russell, Principal Reaves, and all other district employees involved in this school-sponsored religious event should be instructed that they may not organize, promote, or participate in religious activities with students while acting in their capacity as school officials.

Please reply in writing detailing the steps being taken to bring the school district into compliance with the First Amendment.

Sincerely,



Christopher Line
Staff Attorney
Freedom From Religion Foundation

Enclosures



[3/13]
Flagler Palm Coast High School band members play some music outside Palm Coast United Methodist Church on Sunday. [News-Tribune/Frank Fernandez]

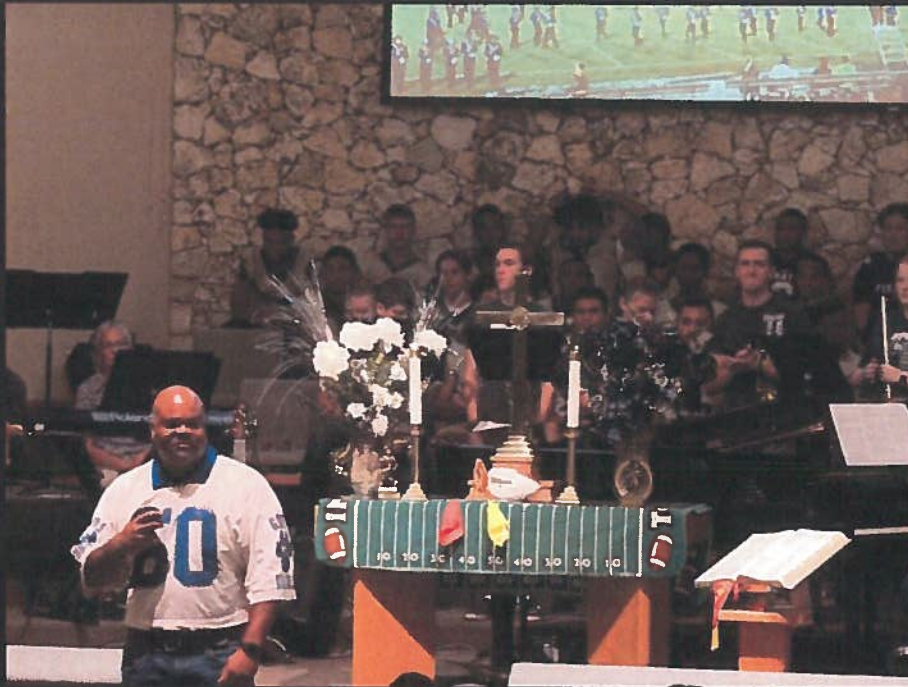


[4/15]
Matanzas High School band members outside Palm Coast United Methodist Church during the Football Sunday celebration at the church. [News-Tribune/Frank Fernandez]



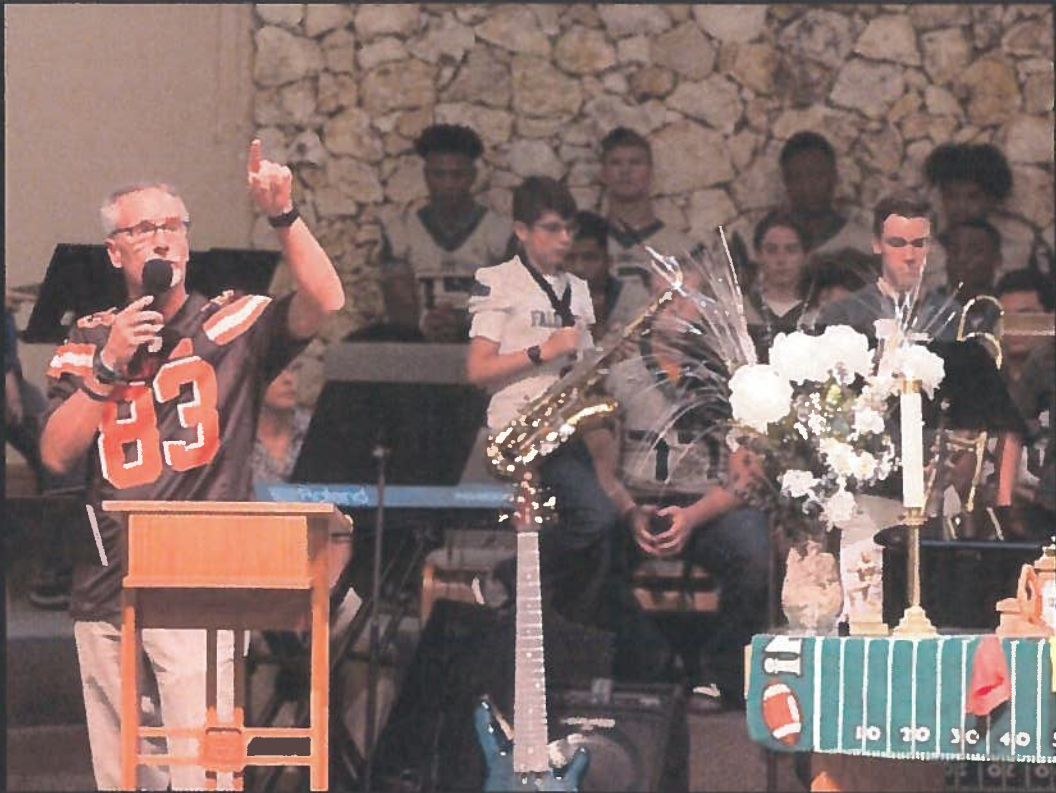
[5/13]

Flagler Palm Coast High School football coach Travis Roland huddles up with his team during Football Sunday at Palm Coast United Methodist Church. [News-Tribune/Frank Fernandez]



[6/13]

Matanzas High School football head coach Den Mathews appears along with his team during special Football Sunday services at Palm Coast United Methodist Church. [News-Tribune/Frank Fernandez]



[9/13]

Flagler County Schools Superintendent James Tager suited up in his Cleveland Browns jersey for Football Sunday at Palm Coast United Methodist Church. [News-Tribune/Frank Fernandez]