

FREEDOM FROM RELIGION *foundation*

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

May 25, 2023

SENT VIA EMAIL & U.S. MAIL: mark.scott@hcbe.net

Mark Scott
Superintendent
Houston County School District
1100 Main Street
Perry, GA 31069

Re: Unconstitutional Religious Coercion in Football Program

Dear Superintendent Scott:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Houston County School District. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 600 members and a local chapter in Georgia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Multiple concerned District community members have reported that Northside High School's new head football coach, Ben Bailey, has been using his position to promote his personal religious beliefs to players. It is our understanding that Coach Bailey has led the team in bible study and prayed with students. Please see the enclosed photos from the team's official Facebook page that appear to show Coach Bailey preaching to students from the bible. One of these posts included the bible verse, "Matthew 25:40."

We ask that the District immediately investigate these reports and ensure that Coach Bailey is not using his position to preach to students, pray with students, or otherwise promote his personal religious beliefs to students. Coach Bailey is free to express his religious beliefs however he wishes outside of his role as a public school football coach, but he cannot use his position to foist his personal religious beliefs onto students.

It is illegal for public school athletic coaches to lead their teams in prayer or religious instruction. The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (holding student-led prayer over the loudspeaker before football games unconstitutional. "Regardless of the listener's support for, or objection to, the message, an objective Santa Fe High School student will unquestionably perceive the inevitable pregame prayer as stamped with her school's seal of approval" because it occurred at a "regularly scheduled school-sponsored function conducted on school property."); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high school

graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily “period of silence not to exceed one minute . . . for meditation or daily prayer”); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963) (holding school-sponsored devotional Bible reading and recitation of the Lord’s Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (declaring school-sponsored prayers in public schools unconstitutional).

It is unconstitutional for public school employees to direct students to partake in religious activities or to participate in the religious activities of their students. *See, e.g., Borden v. Sch. Dist. of the Twp. of East Brunswick*, 523 F.3d 153 (3d 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) (holding a basketball coach’s participation in student prayer circles unconstitutional). The Fifth Circuit held that a coach’s attempts to engage in religious activities with players at team events were unconstitutional because the religious promotion took place “during school-controlled, curriculum-related activities that members of the [athletic] team are required to attend. During these activities [district] coaches and other school employees are present as representatives of the school and their actions are representative of [district] policies.” *Duncanville*, 70 F.3d at 406.

You may be aware that the Supreme Court recently held in *Kennedy v. Bremerton School District* that a high school football coach's silent, private post-game prayer was constitutional. 142 S.Ct. 2407, 2415–16 (2022). Throughout its opinion, the Court repeatedly stressed that the coach silently prayed alone. *Id.* (the coach “offered his prayers quietly while his students were otherwise occupied.”). The prayers “were not publicly broadcast or recited to a captive audience. Students were not required or expected to participate.” *Id.* at 2432. Here, rather than praying privately after games, Coach Bailey appears to have transformed the football program into a religious ministry focused on providing religious instruction to students.

“The preservation and transmission of religious beliefs and worship is a responsibility and a choice **committed to the private sphere.**” *Santa Fe*, 530 U.S. 290 at 310 (quoting *Lee*, 505 U.S. 577 at 589 (emphasis added)). Religious coercion occurring within the District’s football program is particularly troubling for those parents and students who are not Christians or do not subscribe to any religion. This “[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to . . . 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.’” *Id.* at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). Nearly half of students (those born after 1996) are nonreligious so this likely represents a significant number of students in the District.¹

We ask that the District investigate this matter and take immediate action to protect its students. Coach Bailey must be directed to cease including coercive religious activities and practices in the football program. We further request that all District coaches be reminded that they may not push their personal religious beliefs onto students while acting in their official capacity as school

¹ 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.

employees. Please inform us in writing of the steps the District is taking to remedy this serious 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
Staff Attorney
Freedom From Religion Foundation

Enclosures



Northside Football

@N_H_S_Football

Matthew 25:40 #NorthsideDNA



