

FREEDOM FROM RELIGION *foundation*

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

August 31, 2022

SENT VIA U.S. MAIL AND EMAIL: sksmith@bishopcolvin.com

Samantha K. Smith
Bishop, Colvin, Johnson & Kent LLC
1910 First Avenue North
Birmingham, AL 35203

Re: Unconstitutional Prayer at Athletic Events

Dear Ms. Smith:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding another constitutional violation occurring in the Jefferson County School District. We are still awaiting a response to our March 3, 2022 and July 7, 2022 letters. We would appreciate a response to those letters as well. We would like to work with the District to resolve these issues.

A concerned Gardendale High School parent has reported that Jefferson County Schools has resumed its unconstitutional practice of imposing prayer on students, parents, and community members before its football games. Our complainant reports that on August 26, 2022, Gardendale High School allowed a student to recite a prayer over the loudspeaker to open its first home game of the season. Our complaint's child is required to attend football games and as such has been required to observe this school-sponsored religious exercise.

As you are aware, the Supreme Court has specifically struck down invocations given over the loudspeaker at public school athletic events, even when student-led. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 320 (2000) (striking down a school policy that authorized students to vote on whether to have a prayer at high school football games). The Court reasoned that because the football game was a school-sponsored event, hosting prayer was a constitutional violation. *Id.* at 307. Even if student-led, the Court said prayers at a “regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as state advancement of religion. *Id.* at 308.

Like the prayer practices in *Santa Fe*, the prayers at District football games are also inappropriate and unconstitutional. Not only is the District showing favoritism towards religion and coercing participation in these prayers by allotting time for them at the start of games, but it is also providing the prayer-giver with the public address system needed to impose these prayers on all students and community members at games. Public school events must be secular to protect the freedom of conscience of all students. A reasonable District student would certainly perceive the prayers “as stamped with her school’s seal of approval.” *Id.* Government-sponsored prayer “has the improper effect of coercing those present to participate in an act of religious worship.” *Id.* at 312.

It is important to note that this situation differs significantly from the Supreme Court’s recent decision in *Kennedy v. Bremerton School District*, holding that a high school football coach’s silent, private post-game prayer was constitutional. 142 S.Ct. 2407 (2022). As we explained in our previous letter, the ruling in *Kennedy v. Bremerton Sch. Dist.* has not radically changed, and arguably has not changed at all, the law regarding what school districts can or cannot do at high school football games. Throughout its opinion, the Court repeatedly stressed that the coach silently prayed alone. *Id.* at 2415–16. (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. The Court explicitly distinguished the circumstances in *Bremerton* from those in *Santa Fe*:

[T]his case looks very different from those in which this Court has found prayer involving public school students to be problematically coercive. . . . In *Santa Fe Independent School Dist. v. Doe*, the Court held that a school district violated the Establishment Clause by broadcasting a prayer “over the public address system” before each football game. 530 U.S. 290, 294, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000).

Id. at 2431.

The *Bremerton* decision simply affirms that school officials may pray privately during times when they are not acting in their official capacity as district representatives. For instance, school coaches may pray privately to themselves prior to, or following, football games. They cannot, however, lead coercive team prayers, and the District cannot require those in attendance at athletic events to participate in a religious practice by holding public prayers broadcast over the loudspeaker.

It is our understanding that the Board has explained its rationale for bringing back this unconstitutional practice as fulfilling its commitment “to respect[] and protect[] the religious rights of students in a school setting.”¹ This is a flawed rationale, as imposing religious prayer on students, parents, and community members, including the parent who brought this issue to our attention and their child who is required to attend games, violates their religious rights. Jefferson County Schools serves a diverse population with diverse religious beliefs. “School 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.’” *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309-310 (2000) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). This coercive religious practice alienates the thirty-seven percent of Americans who are non-Christian, including the nearly one

¹<https://www.cbs42.com/news/local/gardendale-high-school-moves-forward-with-student-led-pre-game-prayer-follo-wing-elimination-of-school-led-prayers-in-jefferson-county-schools/>

in three Americans who identify as religiously unaffiliated.² Only by remaining neutral with regard to religion can the District truly respect and protect the rights of conscience of all students and their families.

The District must take immediate action to end the practice of scheduling prayer at school-sponsored events and end the use of District equipment to project prayers to the public. 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 that reads "Chris Line". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

² Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), available at www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.