

FREEDOM FROM RELIGION *foundation*

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May 7, 2021

SENT VIA EMAIL & U.S. MAIL: KornegayD@lake.k12.fl.us

Diane Kornegay
Superintendent
Lake County Schools
201 West Burleigh Blvd.
Tavares, FL 32778

Re: Unconstitutional Religious Promotion in Lake Minneola Baseball Program

Dear Superintendent Kornegay:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Lake County Schools. FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 1,700 members in Florida and a local chapter, Central Florida Freethought Community. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned area resident has reported concerns about religious promotion taking place in the Lake Minneola baseball program. A recently published article in the Daily Commercial reveals that Coach Kerry Whetro, an ordained minister, has been promoting religion through his position.¹ The article reports that Coach Whetro “allows for time before and after every practice and game so his players can pray... He and Paula, in fact, pray with them.”² He explains, “God has blessed us to be around kids and share the gospel. If someone wants my job bad enough and I get fired because of that, that’s OK. God will protect us and find us somewhere else to go.”³ He continues, “These kids appreciate us allowing this to happen. We pray before games, after games, we have devotionals, the Fellowship of Christian Athletes come around. It’s gotten to the point now where if we don’t pray after a game or practice, the kids ask, ‘Hey coach, why aren’t we praying?’ It shows we’ve accomplished our goal.”⁴

It is illegal for public school athletic coaches to promote and endorse religion or lead their teams in prayer. 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

¹<https://www.dailycommercial.com/story/sports/2021/04/18/transforming-calling-baseball-field-into-something-legendary/7235280002/>

² *Id.*

³ *Id.*

⁴ *Id.*

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).

In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

Public school coaches must refrain not only from leading prayers themselves, but also from participating in students' prayers. It is unconstitutional for public school employees to participate in the religious activities of their students. *See, e.g., Bd. of Educ. of the Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 253 (1990) (finding that public school faculty may only be at student-led religious meetings in a "nonparticipatory capacity"). Federal courts have held that even a public school coach's silent participation in student prayer circles is unconstitutional. *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 an unconstitutional endorsement of religion).

In *Borden*, the Third Circuit Court of Appeals held the high school football coach's 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).

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

Coach Whetro's conduct is unconstitutional because he endorses and promotes his religion when acting in his official capacity as a school district employee. Certainly, he represents the school

and the team when he acts in his official role as head coach of the Lake Minneola High School baseball team. Therefore, he cannot use his position to instill religion in his players or lead his team in prayer and he cannot organize or advocate for students to lead team prayer either. When a public school employee acting in an official capacity organizes and advocates for team prayer, he effectively endorses religion on the District's behalf. Worse, based on his statements he is intentionally abusing his position to evangelize other people's children in violation of the Constitution.

As you are aware, Lake County Schools is home to a diverse array of families, including parents and students who are non-Christian and non-religious. Non-religious Americans make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.⁵ The District has an obligation to make its sponsored activities nondiscriminatory and welcoming for *all* of its students, not just those in the Christian majority.

We ask that the District commence an investigation into the complaint alleged and take immediate action to stop any and all school-sponsored prayers occurring within any District athletic programs. If Coach Whetro continues to use his public school position to proselytize students, he should be removed from that position. Please inform us in writing of the steps you are taking to remedy this serious and flagrant violation of the First Amendment.

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation

⁵ *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/>.