

FREEDOM FROM RELIGION *foundation*

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

September 1, 2021

SENT VIA EMAIL & U.S. MAIL: superintendent@liberty-benton.org

Mark Kowalski
Superintendent
Liberty-Benton Local Schools
9190 County Road 9
Findlay, OH 45840

Re: Unconstitutional Religious Promotion in Football Program

Dear Superintendent Kowalski:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Liberty-Benton Local Schools. As you may recall, FFRF is a national nonprofit organization with more than 35,000 members across the country, including more than 1,000 members in Ohio. 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 local District community member has reported that Scott Garlock, head coach of the Liberty-Benton High School football team, is using his position to promote Christianity to his students. Our complainant reports that Coach Garlock requires players to lead prayers at team meals, leads students in the Lord's Prayer before games, and leads students in a post-game prayer. Our complainant reports that Coach Garlock started these practices many years ago when he was the team's coach and that he passed them onto the next coach, who also implemented these practices, until Coach Garlock became head coach again this year and resumed these practices himself.

We also understand that there is a school-sponsored prayer that takes place before each game. We understand this "Friday Night Prayer" tradition involves the school marching band playing Amazing Grace and then leading parents, families, and cheerleaders onto the field for a prayer.

It is illegal for public school athletic coaches to lead their teams in prayer or instruct others to lead team prayer. It is also illegal for the school to sponsor a religious song and prayer before games. 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).

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 Garlock’s conduct is unconstitutional because he endorses and promotes religion when acting in his official capacity as a school district employee. Certainly, when acting in his official capacity as the coach of the football team, he represents the school and the team. Therefore, he cannot organize or advocate for his students to lead a team prayer. Nor can the school band be asked to play a hymn in support of prayer. When public school employees acting in their official

capacity organize and advocate for team prayer, they effectively endorse religion on the District's behalf.

We ask that the District commence an investigation into the alleged complaint and take immediate action to stop any and all school-sponsored prayers from occurring within any District athletic programs. Please inform us in writing of the steps you are taking to remedy this long-running and flagrant 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