

FREEDOM FROM RELIGION *foundation*

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SENT VIA U.S. MAIL AND EMAIL

bewatkins@mcas.k12.in.us

Barbara Eason-Watkins
Superintendent
Michigan City Area Schools
408 S. Carroll Avenue
Michigan City, IN 46360

Re: Unconstitutional Coach Prayer

Dear Dr. Eason-Watkins:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in the Michigan City Area Schools. FFRF is a national nonprofit organization with more than 35,000 members, including more than 485 members and a chapter in Indiana. 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 citizen contacted us regarding prayer initiated by a football coach at Michigan City High School. A Facebook post with a post-game video after the Michigan City High School football team won the regional championship shows Coach Phil D. Mason initiated a team prayer, stating “we really need to thank Him, okay.”¹ He participated in the prayer with the team with head bowed and hand on shoulder of a player.

Public schools cannot endorse or promote religion. The Supreme Court has continually struck down school-sponsored prayer in public schools because it violates the Establishment Clause’s requirement of church-state separation. *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 because “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). A

¹ <https://www.facebook.com/chris.mahlmann/videos/366695961912927/>.

football coach is a state actor and he violates his, and the school's, constitutional obligation to religious neutrality when engaging in prayer with the team.

Public school coaches must refrain not only from leading prayers themselves, but also from participating in students' prayers. The Supreme Court has held 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 extensive history of organizing, leading and participating in prayers before games 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.*

The Michigan City Area School District is home to diverse religious beliefs, including students and families 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, including more than one in four Americans who identify as religiously unaffiliated.² The school district has a duty to welcome students of all beliefs. Coaches speak to a captive audience and cannot discriminate by coercing students to pray to play.

Coach Mason's conduct is unconstitutional. He endorses and promotes religion when acting in his official capacity as a school district employee. He cannot participate in a team prayer, let

² *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/>.

alone initiate the prayer. When a public school employee acting in an official capacity organizes and advocates for team prayer, he effectively endorses religion on the school district's behalf.

We ask that Michigan City Area Schools commence an immediate investigation into the complaint alleged and take immediate action to stop any and all school-sponsored prayers. School employees should be educated as to their constitutional obligations. Coach Mason must refrain from preaching. Please inform us in writing of the steps you are taking to remedy this serious constitutional violation so that we may inform our complainant.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen M. Heineman", followed by a horizontal line.

Karen M. Heineman
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation