

# FREEDOM FROM RELIGION *foundation*

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December 3, 2021

**SENT VIA FAX & U.S. MAIL: (912) 537-8810**

Tom W. Everett  
Attorney at Law  
P.O. Box 1840  
Vidalia, GA 30475

Re: Unconstitutional Religious Promotion in Toombs County High School Football Program

Dear Mr. Everett:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation still occurring in Toombs County Schools. It is my understanding that you represent the District; please let me know if that is no longer the case.

You will recall that we wrote to the District in 2018 regarding coaches and a pastor, Steven Toole, leading and participating in religious exercises with students. On February 21, 2019 you responded on behalf of the District, informing us that Pastor Toole's religious activities with students were not authorized, sponsored, or promoted by the District. The District agreed that staff should not be participating in any form of religious activity with students, and the Superintendent implemented steps to avoid similar activity in the future. We believed this issue was resolved, but a local community member has now reported that Pastor Toole and coaches have continued to engage in religious activities with students.

Pastor Toole is listed on the team's website as "Coach and Team Chaplain." He also recently posted a series of photos on Facebook showing coaches engaged in prayer with students. Please see the enclosed photos.

As you are aware, It is illegal for public school athletic coaches to lead their teams in prayer or religious chants. 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.*

This conduct is unconstitutional because these coaches are endorsing and promoting religion while acting in their official capacity as school district employees. Certainly, they represent the school and the team when they act in their official role as coaches of the Toombs County High School football team. Therefore, they cannot lead their team in prayer and they cannot organize or advocate for students to lead team prayer. When public school employees acting in an official capacity organize and advocate for team prayer, they effectively endorse religion on the District's behalf.

Furthermore, public schools cannot appoint or employ a chaplain, seek out a spiritual leader for students, or agree to have a volunteer teach other people's children that character centers on religious belief, because public schools may not advance or promote religion. TCS cannot allow non-school adults access to proselytize the children in its charge, and it certainly cannot grant that access to ministers seeking to grow and target their religious ministries using 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. at 310 (quoting *Lee v. Weisman*, 505 U.S. at 589). This is a violation of both students' and parents' rights.

This school endorsement of Christianity is particularly troubling for those parents and students who are non-religious or not Christian. The "[s]chool sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents 'that they are outsiders,

not full members of the political community and accompanying message to adherents that they are insiders, favored members of the political community.” *Id.* (quoting *Lynch v. Donnelly*, 465 U.S. at 668) (O’Connor, J., concurring).

The District must take action to stop any and all school-sponsored prayers occurring within District athletic programs. TCS must ensure that it is no longer allowing religious leaders to have access to its students and may no longer employ Pastor Toole or anyone else as a team chaplain. Please inform us in writing of the steps the District is taking to remedy these serious and flagrant violations 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

# Steven Toole

## *Coach and Team Chaplain*







