

FREEDOM FROM RELIGION *foundation*

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September 19, 2024

SENT VIA EMAIL & U.S. MAIL: matt.smith@aisd.net

Superintendent Matt Smith
Arlington Independent School District
690 East Lamar Boulevard
Arlington, TX 76011

Re: Unconstitutional proselytization in athletics

Dear Superintendent Smith:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at James Bowie High School. FFRF is a national nonprofit organization with over 40,000 members across the country, including more than 1,700 members in Texas. 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 community member informs us of ongoing proselytization occurring during school-hour football team meetings at James Bowie High School. For instance, during a scheduled 9th period class, the Junior Varsity and Varsity teams received a lecture on the importance of living their lives according to the bible. One witness says that a football team coach discussed how God teaches people to “spread their domain” while projecting a verse from Genesis onto a screen as a visual aid. A witness described the scene as “sounding a lot like church.”

School officials cannot proselytize captive audiences of students. Such religious coercion is at the heart of the First Amendment’s Establishment Clause. We ask the District to investigate and counsel its athletic staff to refrain from discussing religion with students or promoting their personal religious beliefs to students.

The District may not host and promote a religious class. It is well established that public schools may not provide devotional instruction. In *McCullum v. Board of Education*—the seminal case on this issue—the Supreme Court held that bible classes in public schools are unconstitutional. 333 U.S. 203 (1948). The district in *McCullum* allowed religious teachers, employed by private religious groups, to teach students a regular bible class. The Court held, “here not only are the state’s tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state’s compulsory public school machinery. This is not separation of Church and State.” *Id.* at 212. Here, the District seemingly hosts bible lessons with student-athletes, on school property, with school staff, on school time. That practice runs headfirst into the *McCullum*—and therefore the First Amendment.

If this is not intended to be a religious class, there is nevertheless an Establishment Clause violation. It is unlawful for public school athletic coaches to lead their teams in biblical instruction, lessons, or prayer. The Supreme Court has continually struck down school-sponsored religious worship in public schools. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000) (student-led prayer over the loudspeaker before a football game is unconstitutional); *Lee v. Weisman*, 505 U.S. 577 (1992) (prayer at public school graduations is unconstitutional); *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) (school-sponsored devotional Bible reading and recitation of the Lord’s Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (school-sponsored prayers in public schools unconstitutional).

Public school employees may not direct students to partake in religious activities or participate in students’ religious activities. *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) (a basketball coach’s participation in student prayer circles is unconstitutional). The Fifth Circuit—which has jurisdiction over Texas—held that a coach’s attempts to engage in religious activities with players were unconstitutional because the religious promotion took place “during school-controlled, curriculum-related activities that members of the [athletic] team are required to attend. During these activities [district] coaches and other school employees are present as representatives of the school and their actions are representative of [district] policies.” *Id.*, 70 F.3d at 406. So too here.

The Supreme Court’s recent decision in *Kennedy v. Bremerton School District* is inapposite. 142 S.Ct. 2407 (2022). The *Kennedy* Court repeatedly stressed that the coach “offered his prayers quietly while his students were otherwise occupied”; the prayers “were not publicly broadcast or recited to a captive audience”; “[s]tudents were not required or expected to participate.” *Id.* at 2415–16, 2432. *Kennedy* does not overrule *Duncanville*, but instead *affirms it*. Here, rather than praying privately after games, a JBHS football coach is leading religious *instruction* with students during a school activity, with “district coaches and other school employees [] present.” *Duncanville*, 70 F.3d 406. The District does not offend this coach’s First Amendment rights by restraining their proselytizing over a captive audience of students.

“The preservation and transmission of religious beliefs and worship is . . . a choice committed to the private sphere.” *Santa Fe*, 530 U.S. 290 at 310 (quoting *Lee*, 505 U.S. 589). Religious coercion occurring within the District is particularly troubling for those parents and students who are not Christian or who are nonreligious. JBHS’s “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.’” *Id.* at 309–10 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring)). Nearly half of Generation Z (those born after 1996) are nonreligious, which may be quite a few of the District’s athletes.¹

¹ Ryan P. Burge, *2022 Cooperative Election Study of 60,000 respondents*, www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.

To respect the First Amendment rights of student athletes within the District, JBHS athletic staff should be counseled to refrain from discussing religion with students. That includes chilling proselytizing during school hours, during a school activity, on school property, by school staff. Please respond in writing with the steps the District will take to cure this constitutional violation. Thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script that reads "Hirsh M. Joshi".

Hirsh M. Joshi
Patrick O'Reiley Legal Fellow
Freedom From Religion Foundation