

FREEDOM FROM RELIGION *foundation*

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October 29, 2024

SENT VIA EMAIL & U.S. MAIL: michelle.francis@silvertonisd.net

Superintendent Michelle Francis
Silverton Independent School District
P.O. Box 608
Silverton, Texas 79257

Re: Unconstitutional loudspeaker prayer

Dear Superintendent Francis:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Silverton High School. FFRF is a national nonprofit organization with about 40,000 members across the country, including more than 1,700 members and a chapter 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.

We are informed of prayer over loudspeaker before every SHS home football game. For instance, at the October 24, 2024 game, a long Christian prayer commenced the game. It's our understanding that this was senior night where graduating seniors football team members were celebrated.

Prayer over loudspeakers at student athletic events coerces student athletes and all others in attendance into observing and participating in a religious exercise. That coercion is at the heart of the Establishment Clause. We ask the District to investigate and cease hosting official prayer at all District events.

Public school students have a constitutional right to be free from religious indoctrination in their public schools, including when attending school-sponsored events. It is well settled that public schools may not show favoritism toward or coerce belief or participation in religion. *See generally Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Epperson v. Arkansas*, 393 U.S. 97 (1967); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Engel v. Vitale*, 370 U.S. 421 (1962); *McCullum v. Bd. of Educ.*, 333 U.S. 203 (1948). The Supreme Court has struck down prayers at school-sponsored events. *See Lee*, 505 U.S. 577 (declaring prayers at a public school graduation unconstitutional).

School officials may not invite a student, teacher, faculty member, clergy member, or anyone else to give any type of prayer, invocation, benediction, or sermon at public school-sponsored events, nor may they give a prayer themselves. *See Santa Fe*, 530 U.S. 290 (holding that student-delivered prayers at high school football games violate the Establishment Clause). "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce

anyone to support or participate in religion or its exercise[.]” *Lee*, 505 U.S. at 587. Government-led prayer “has the improper effect of coercing those present to participate in an act of religious worship.” *Santa Fe*, 530 U.S. at 312.

Student athletes are especially susceptible to coercion. When their school’s athletic program compels them to observe and participate in prayer, student athletes undoubtedly feel that participation is essential to pleasing their team’s coach. Prayer at student athletic events places athletes in a dilemma: They must either worship—against their conscience—or openly dissent, risking their standing on the team. That ultimatum is exactly what the Establishment Clause guards against.

The Supreme Court’s decision in *Kennedy v. Bremerton School District* is inapposite. 597 U.S. 507 (2022). In *Kennedy*, the Court ruled that a high school football coach’s silent private prayers were constitutional. *Id.* at 513. Throughout the opinion, the 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 513–14. Here, the District directs religious scripture *at its students*. That is a far cry from coach Kennedy’s private, silent prayer. Requiring SHS staff or others to refrain from broadcasting prayer to students and attendees at school events does not implicate their First Amendment rights. *See generally Garcetti v. Ceballos*, 547 U.S. 410 (2006); *City of San Diego v. Roe*, 543 U.S. 77 (2004); *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 970 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1807 (2012).

“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. SHS’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)).

Attendee acceptance or indifference to prayer is immaterial; courts continually reaffirm that the protection of minorities’ rights is the Constitution’s touchstone. As the Supreme Court has said, “fundamental rights may not be submitted to vote; they depend on the outcome of no elections.” *Santa Fe*, 530 U.S. at 304–05 (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943)). “The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” *Barnette*, 319 U.S. at 638. The District has a constitutional duty to remain neutral toward religion. By having prayer at official school events, the District abridges that duty and needlessly marginalizes students who are a part of the forty-nine percent of Generation Z who are religiously unaffiliated.¹

¹ Ryan P. Burge, *2022 Cooperative Election Study of 60,000 respondents*, Apr. 3, 2023, <https://religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/>.

To comply with its Establishment Clause obligations, the District must cease holding school-sponsored prayer over the loudspeaker before SHS football games. Please respond in writing with the steps the District will take to respect the First Amendment rights of students.

Sincerely,

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

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