

HIGH SCHOOL FOOTBALL COACH DOES NOT HAVE THE RIGHT TO PRAY ON THE 50 YARD LINE AFTER THE GAME – LESSONS FROM THE NINTH CIRCUIT COURT OF APPEALS

Education Law Notes

09.05.2017

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Does a school district violate the First Amendment when it prohibits a football coach from kneeling on the fifty yard line and praying with students and members of the public at the end of each high school football game? The Ninth Circuit recently answered this question with a resounding “no” in *Kennedy v. Bremerton School District*.

This is the tale of the assistant football coach at the Bremerton High School (BHS) in the state of Washington, who insisted that his religion required him to kneel at the fifty yard line after the end of each football game to give a brief prayer of thanksgiving for “player safety, sportsmanship, and spirited competition” in full view of the students and spectators. The practice gradually morphed from the coach simply kneeling down at the end of the game for a few seconds of silent prayer to his giving short motivational speeches including religious content at the end of each game while the students, coaches and attendees from both teams knelt around him on the field in full view of the students, parents and spectators. The District instructed him to stop the practice, offered him alternative spaces at the school where he could pray in private immediately following the game, and offered to allow him access to the field after the spectators left in order to pray in private. He, however, refused these offered accommodations and continued to hold the prayer sessions on the field immediately following the games. The District subsequently was contacted by members of the Satanist religion demanding that they also be given access to the field to conduct ceremonies after the football games. At that point, the District placed the coach on administrative leave for the remainder of the season and failed to renew his contract for the next year. He filed a federal law suit claiming he was terminated for exercising his First Amendment free speech rights and requested a preliminary injunction returning him to his position and allowing him to pray on the fifty yard line after every game. The lower court denied the preliminary injunction and the Ninth Circuit upheld the denial finding that he was not likely to succeed on his claim.

In rejecting the coach’s request for preliminary injunction, the Court found that his actions were taken in his role as the coach and that, therefore, the District had a right to regulate his speech. The Court pointed to the fact that the conduct occurred on the school football field – a place the coach only had access to by virtue of his position as the assistant football coach. The Court stated that he “spoke at a school event, on school

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property, wearing [school] logoed attire, while on duty as a supervisor, and in the most prominent position on the field, where he knew it was inevitable that students, parents, fans and occasionally the media, would observe his behavior.” Thus, the Court found that his speech was within the scope of his job duties, and his employer thus had the right to regulate the content of that speech. The Court also found troubling that his actions appeared to coerce students into joining in with him based in part of the fact that the students did not engage in prayer after games when he was not present.

Although not binding on schools in Connecticut, the decision is instructive. While employees do not shed their First Amendment rights at the schoolhouse doors, a district retains control over the speech that its teachers, coaches and other employees deliver to students while acting in an official capacity. Districts cannot and should not prohibit an employee from engaging in private prayer during the school day, but they are not required to give the employee a public forum in which to engage in that prayer. Applied generally, this case reinforces a public school district’s ability to control both the content that teachers deliver to its students during the school day and non-curricular related speech that is delivered within the context of the teacher performing his/her job duties.

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