

No. 21-418

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In the  
**Supreme Court of the United States**

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JOSEPH A. KENNEDY,

*Petitioner,*

v.

BREMERTON SCHOOL DISTRICT,

*Respondent.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**JOINT APPENDIX**

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Petition for Writ of Certiorari Filed September 14, 2021  
Petition for Writ of Certiorari Granted January 14, 2022

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JA 1

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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No. 20-35222

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JOSEPH A. KENNEDY,

*Plaintiff-Appellant,*

v.

BREMERTON SCHOOL DISTRICT,

*Defendant-Appellee.*

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**RELEVANT DOCKET ENTRIES**

Date Filed	#	Docket Text
3/20/2020	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellant Joseph A. Kennedy Mediation Questionnaire due on 03/18/2020. Transcript ordered by 04/10/2020. Transcript due 05/11/2020. Appellant Joseph A. Kennedy opening brief due 06/22/2020. Appellee Bremerton School District answering brief due 07/22/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11626624]

JA 2

Date Filed	#	Docket Text
		(RT) [Entered: 03/11/2020 03:18 PM]
* * *		
07/22/2020	13	Submitted (ECF) Opening Brief for review. Submitted by Appellant Joseph A. Kennedy. Date of service: 07/22/2020. [11762868] [20-35222] (Anderson, Devin) [Entered: 07/22/2020 07:59 PM]
07/22/2020	14	Submitted (ECF) excerpts of record. Submitted by Appellant Joseph A. Kennedy. Date of service: 07/22/2020. [11762870] [20-35222] (Anderson, Devin) [Entered: 07/22/2020 08:06 PM]
* * *		
07/29/2020	20	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Brief for the States of Alaska, Texas, Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, and West Virginia as Amici Curiae. Date of service: 07/29/2020. [11770784] [20-35222]

JA 3

Date Filed	#	Docket Text
		(Thompson, Natalie) [Entered: 07/29/2020 01:57 PM]
* * *		
09/21/2020	26	Submitted (ECF) Answering Brief for review. Submitted by Appellee Bremerton School District. Date of service: 09/21/2020. [11831381] [20-35222]--[COURT UPDATE: Attached corrected PDF. 09/22/2020 by LA] (Tierney, Michael) [Entered: 09/21/2020 03:00 PM]
09/21/2020	27	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Bremerton School District. Date of service: 09/21/2020. [11831664] [20-35222] (Tierney, Michael) [Entered: 09/21/2020 04:31 PM]
* * *		
09/27/2020	32	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Religious and Civil-Rights Organizations. Date of service: 09/27/2020. [11838259] [20-35222] (Katskee, Richard) [Entered: 09/27/2020 07:50 AM]
* * *		

Date Filed	#	Docket Text
09/28/2020	35	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by NATIONAL SCHOOL BOARDS ASSOCIATION; ASSOCIATION OF ALASKA SCHOOL BOARDS; ARIZONA SCHOOL BOARDS ASSOCIATION; CALIFORNIA SCHOOL BOARDS ASSOCIATION; NEVADA ASSOCIATION OF SCHOOL BOARDS; AND WASHINGTON STATE SCHOOL DIRECTORS ASSOCIATION. Date of service: 09/28/2020. [11839467] [20-35222] (Simmons, Sloan) [Entered: 09/28/2020 02:33 PM]
* * *		
10/05/2020	42	Filed 4 CDs from Appellee Bremerton School District containing video exhibits. Sent to Records. [11847855] (KWG) [Entered: 10/05/2020 03:10 PM]
10/07/2020	43	Filed by Appellant Joseph A. Kennedy 5 USB drives containing video exhibits. Sent to Records. [11851230]--[Edited: corrected number of copies. 12/11/2020 by LA] (LA) [Entered: 10/07/2020 02:59 PM]

Date Filed	#	Docket Text
10/13/2020	44	Submitted (ECF) Reply Brief for review. Submitted by Appellant Joseph A. Kennedy. Date of service: 10/13/2020. [11856119] [20-35222] (Anderson, Devin) [Entered: 10/13/2020 11:56 AM]
* * *		
10/21/2020	47	Filed order (DOROTHY W. NELSON, MILAN D. SMITH, JR. and MORGAN B. CHRISTEN): Oral argument will be held at 10:00 a.m. Pacific Time on Monday, January 25, 2021. All parties, as well as the judges, will appear for argument by video. Each side will have 30 minutes of argument time. [11867506] (AF) [Entered: 10/21/2020 03:11 PM]
* * *		
01/07/2021	51	Filed (ECF) Amicus Curiae Religious and Civil-Rights Organizations Unopposed Motion for miscellaneous relief [Unopposed Motion for Leave to Participate in Oral Argument]. Date of service: 01/07/2021. [11955867] [20-35222] (Katskee, Richard) [Entered: 01/07/2021 01:36 PM]
01/08/2021	52	Filed text clerk order (Deputy Clerk: AF): The amicus curiae

Date Filed	#	Docket Text
		Religious and Civil-Rights Organizations' unopposed motion to participate in oral argument (Dkt. [51]) is granted. [11957556] (AF) [Entered: 01/08/2021 03:21 PM]
* * *		
01/25/2021	54	ARGUED AND SUBMITTED TO DOROTHY W. NELSON, MILAN D. SMITH, JR. and MORGAN B. CHRISTEN. [11979817] (DLM) [Entered: 01/25/2021 11:31 AM]
01/25/2021	55	Filed (ECF) Amicus Curiae Religious and Civil-Rights Organizations citation of supplemental authorities. Date of service: 01/25/2021. [11980075] [20-35222] (Katskee, Richard) [Entered: 01/25/2021 01:12 PM]
01/25/2021	56	Filed (ECF) Appellee Bremerton School District citation of supplemental authorities. Date of service: 01/25/2021. [11980400] [20-35222] (Tierney, Michael) [Entered: 01/25/2021 03:06 PM]
01/25/2021	57	Filed (ECF) Appellee Bremerton School District citation of supplemental

Date Filed	#	Docket Text
		authorities. Date of service: 01/25/2021. [11980426] [20-35222] (Tierney, Michael) [Entered: 01/25/2021 03:27 PM]
* * *		
01/26/2021	59	Filed (ECF) Appellant Joseph A. Kennedy citation of supplemental authorities. Date of service: 01/26/2021. [11982329] [20-35222] (Anderson, Devin) [Entered: 01/26/2021 04:11 PM]
03/18/2021	60	FILED OPINION (DOROTHY W. NELSON, MILAN D. SMITH, JR. and MORGAN B. CHRISTEN) The judgment of the district court is AFFIRMED. Judge: MDS Authoring, Judge: MBC Concurring. FILED AND ENTERED JUDGMENT. [12045408]--[Edited (typos corrected) 03/19/2021 by AKM] (AKM) [Entered: 03/18/2021 08:25 AM]
04/21/2021	61	Filed order (DOROTHY W. NELSON, MILAN D. SMITH, JR. and MORGAN B. CHRISTEN): The parties are directed to file simultaneous briefs addressing whether this case should be reheard en banc. The briefs shall not exceed 15

Date Filed	#	Docket Text
		pages or 4200 words and shall be filed within 21 days of the date of this order. [12081950] (AF) [Entered: 04/21/2021 10:06 AM]
* * *		
05/21/2021	67	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Joseph A. Kennedy. Date of service: 05/12/2021. [12112068]--[COURT ENTERED FILING to replace incorrect entry [64].] (LA) [Entered: 05/13/2021 01:19 PM]
05/12/2021	68	Submitted (ECF) Supplemental Brief for review. Submitted by Appellee Bremerton School District. Date of service: 05/12/2021. [12112069]--[COURT ENTERED FILING to replace incorrect entry [65].] (LA) [Entered: 05/13/2021 01:20 PM]
* * *		
07/19/2021	76	Filed Order for PUBLICATION (DOROTHY W. NELSON, MILAN D. SMITH, JR. and MORGAN B. CHRISTEN) A judge of this court sua sponte requested a vote on whether to rehear this case en banc. A vote was taken and the matter failed



Date Filed	#	Docket Text
		<p>to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. See Fed. R. App. P. 35(f). Rehearing en banc is DENIED. Judge Bress did not participate in the deliberations or vote in this case. Concurrence by Judge Milan D. Smith, Jr.; Concurrence by Judge Christen; Statement by Judge O'Scannlain; Statement by Judges O'Scannlain and Bea; Statements by Judge O'Scannlain; Statement by Judge Bea; Dissent by Judge Ikuta; Dissent by Judge R. Nelson; Dissent by Judge Collins. [12175679]--[Edited (corrections made to RDN dissent) 07/20/2021 by AKM]--[Edited (typo corrected in RDN dissent) 08/04/2021 by AKM] (AKM) [Entered: 07/19/2021 09:11 AM]</p>
* * *		

JA 10

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON**

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No. 16-cv-05694

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JOSEPH A. KENNEDY,  
*Plaintiff,*

v.

BREMERTON SCHOOL DISTRICT,  
*Defendant.*

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**RELEVANT DOCKET ENTRIES**

Date Filed	#	Docket Text
08/09/2016	1	COMPLAINT <i>for Injunctive and Declaratory Relief</i> against defendant(s) Bremerton School District with JURY DEMAND (Receipt # 0981-4556742) Attorney Jeffrey Paul Helsdon added to party Joseph A Kennedy(pty:pla), filed by Joseph A Kennedy. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet, # 3 Summons)(Helsdon, Jeffrey) (Entered: 08/09/2016)
* * *		
08/24/2016	15	MOTION for Preliminary Injunction by Plaintiff Joseph A Kennedy. Oral Argument

Date Filed	#	Docket Text
		Requested. (Attachments: # 1 Proposed Order) Noting Date 9/16/2016, (Ricketts, Rebekah) (Entered: 08/24/2016)
08/24/2016	16	DECLARATION of Plaintiff Joseph A. Kennedy filed by Plaintiff Joseph A Kennedy re 15 MOTION for Preliminary Injunction (Ricketts, Rebekah) (Entered: 08/24/2016)
08/24/2016	17	DECLARATION of Rebekah Perry Ricketts filed by Plaintiff Joseph A Kennedy re 15 MOTION for Preliminary Injunction (Ricketts, Rebekah) (Entered: 08/24/2016)
08/30/2016	18	ANSWER to Complaint; by Bremerton School District. (Tierney, Michael) (Entered: 08/30/2016)
09/12/2016	19	RESPONSE, by Defendant Bremerton School District, to 15 MOTION for Preliminary Injunction. (Tierney, Michael) (Entered: 09/12/2016)
09/12/2016	20	DECLARATION of Michael B. Tierney filed by Defendant Bremerton School District re 15 MOTION for Preliminary Injunction (Attachments: # 1 Exhibit Photo of Kennedy

Date Filed	#	Docket Text
		<p>Prayer Group on October 16, 2015, # 2 Exhibit Photo of Kennedy Prayer Group on October 29, 2015, # 3 Exhibit Photo of Satanist Group Outside Bremerton High School Football Field, # 4 Exhibit Coach and Volunteer Coach Agreement signed October 5, 2015, # 5 Exhibit Notification of Reasonable Assurance signed October 5, 2015, # 6 Exhibit Assistant Coach Responsibilities, # 7 Exhibit Head Coach Responsibilities, # 8 Exhibit Kennedy Evaluation by Head Coach signed November 14, 2015, # 9 Exhibit Kennedy Evaluation by Athletic Director signed December 16, 2015, # 10 Exhibit Letter to EEOC from Jeff Ganson dated April 6, 2016, # 11 Exhibit Email to Jeff Barton and John Polm from Aaron Leavell dated September 18. 2015, # 12 Exhibit Letter to Kennedy from Bremerton School District dated September 17, 2015, # 13 Exhibit Letter to Bremerton School District from Pl. Counsel Hiram Sasser dated October 14. 2015, # 14 Exhibit Letter to</p>

Date Filed	#	Docket Text
		Kennedy from Bremerton School District dated October 23, 2015, # 15 Exhibit Letter to Kennedy from Bremerton School District dated October 28, 2015) (Tierney, Michael) (Entered: 09/12/2016)
09/12/2016	21	DECLARATION of Aaron Leavell filed by Defendant Bremerton School District re 15 MOTION for Preliminary Injunction (Tierney, Michael) (Entered: 09/12/2016)
09/12/2016	22	DECLARATION of Garth Steedman filed by Defendant Bremerton School District re 15 MOTION for Preliminary Injunction (Tierney, Michael) (Entered: 09/12/2016)
* * *		
09/15/2016	24	REPLY, filed by Plaintiff Joseph A Kennedy, TO RESPONSE to 15 MOTION for Preliminary Injunction (Ricketts, Rebekah) (Entered: 09/15/2016)
09/19/2016	25	MINUTE ENTRY for proceedings held before Judge Ronald B. Leighton- Dep Clerk: <i>Jean Boring</i> ; Pla Counsel: <i>Rebekah Ricketts, Jeffrey Helsdon, Michael Berry,</i>

Date Filed	#	Docket Text
		<i>Anthony Ferate</i> ; Def Counsel: <i>Michael Tierney</i> ; CR: <i>Barry Fanning</i> ; <b>Preliminary Injunction Hearing</b> held on 9/19/2016. Argument presented. For the reasons orally stated on the record, the 15 MOTION for Preliminary Injunction is DENIED. Hearing concluded. (JAB) (Entered: 09/19/2016)
* * *		
10/03/2016	28	NOTICE OF APPEAL (16-35801) to Ninth Circuit re 25 Order denying his Motion for a Preliminary Injunction by Plaintiff Joseph A Kennedy. Filing Fee \$505, Receipt number 0981-4621602. (Ricketts, Rebekah) Modified on 10/4/2016 to add CCA#. (RE) Modified on 10/6/2016 (GMR). (Entered: 10/03/2016)
10/04/2016	29	USCA Case Number 16-35801 for 28 Notice of Appeal filed by Joseph A Kennedy. (RE) (Main Document 29 replaced on 10/6/2016) (GMR). (Entered: 10/04/2016)
10/20/2016	30	MOTION to Stay <i>Proceedings Pending Appeal</i> by Plaintiff Joseph A Kennedy. (Attachments: # 1 Proposed

Date Filed	#	Docket Text
		Order) Noting Date 11/4/2016, (Ricketts, Rebekah) (Entered: 10/20/2016)
11/02/2016	31	RESPONSE, by Defendant Bremerton School District, to 30 MOTION to Stay <i>Proceedings Pending Appeal</i> . (Tierney, Michael) (Entered: 11/02/2016)
11/03/2016	32	REPLY, filed by Plaintiff Joseph A Kennedy, TO RESPONSE to 30 MOTION to Stay <i>Proceedings Pending Appeal</i> (Ricketts, Rebekah) (Entered: 11/03/2016)
* * *		
11/10/2016	34	ORDER granting 30 Plaintiff's Motion to Stay until after appeal has been decided upon; signed by Judge Ronald B. Leighton.(DN) (Entered: 11/10/2016)
* * *		
08/23/2017	36	OPINION (16-35801 - Not the Mandate) as to the 28 Notice of Appeal filed by Joseph A Kennedy. We <b>AFFIRM</b> the district court's order denying Kennedy's motion for a preliminary injunction. Appellant shall bear costs on appeal. Fed. R. App. P. 39(a)(2).

Date Filed	#	Docket Text
		Opinion by Judge Milan D. Smith, Jr.; Concurrence by Judge Milan D. Smith, Jr. FILED AND ENTERED JUDGMENT. (GMR) (Entered: 08/24/2017)
08/28/2017	37	ORDER of USCA (16-35801) as to the 28 Notice of Appeal, filed by Joseph A Kennedy. Plaintiff-Appellant Joseph A. Kennedy's motion for an extension of time within which to file a petition for panel rehearing and/or rehearing en banc is granted. See Dkt. No. 65. Any such petitions shall be filed on or before September 20, 2017. (GMR) (Entered: 08/29/2017)
09/21/2017	38	ORDER of USCA (16-35801) as to the 28 Notice of Appeal filed by Joseph A Kennedy. Defendant-Appellee Bremerton School District is directed to file a response to Plaintiff-Appellant Joseph A. Kennedy's Petition for Rehearing En Banc filed with this court on September 20, 2017. The response shall not exceed seventeen pages or 4,200 words, and shall be filed within 21 days



JA 17

Date Filed	#	Docket Text
		of the date of this order. (CMG) (Entered: 09/22/2017)
01/25/2018	39	ORDER OF USCA (16-35801) as to the 28 Notice of Appeal filed by Joseph A Kennedy. The petition for rehearing en banc is DENIED. (GMR) (Entered: 01/25/2018)
* * *		
07/03/2018	44	LETTER OF TRANSMITTAL from USCA (16-35801) re Notice from the Supreme Court of the United States - The petition for a writ of certiorari in the above entitled case was filed on June 25, 2018 and placed on the docket July 2, 2018 as No. 18-12. (CMG) (Entered: 07/06/2018)
01/22/2019	45	LETTER OF TRANSMITTAL from the Supreme Court of the United States (18-12) to the USCA (16-35801). The petition for a writ of certiorari is denied. Statement of Justice Alito, with whom Justice Thomas, Justice Gorsuch, and Justice Kavanaugh join, respecting the denial of certiorari. (Detached Opinion). (Attachments: # 1

Date Filed	#	Docket Text
		Opinion) (CDA) (Entered: 01/23/2019)
* * *		
11/14/2019	63	MOTION for Summary Judgment, filed by Defendant Bremerton School District. (Attachments: # 1 Proposed Order Granting Defendant's Motion for Summary Judgment) Noting Date 12/6/2019, (Tierney, Michael) (Entered: 11/14/2019)
11/14/2019	64	DECLARATION of Michael B. Tierney in Support of Defendant's Motion for Summary Judgment filed by Defendant Bremerton School District re 63 MOTION for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26

JA 19

Date Filed	#	Docket Text
		Exhibit 26, # 27 Exhibit 27)(Tierney, Michael) (Entered: 11/14/2019)
11/14/2019	65	DECLARATION of Jeff Barton filed by Defendant Bremerton School District re 63 MOTION for Summary Judgment (Tierney, Michael) (Entered: 11/14/2019)
11/14/2019	66	DECLARATION of Nathan Gillam filed by Defendant Bremerton School District re 63 MOTION for Summary Judgment (Tierney, Michael) (Entered: 11/14/2019)
11/14/2019	67	DECLARATION of Aaron Leavell in Support of Defendant's Motion for Summary Judgment filed by Defendant Bremerton School District re 63 MOTION for Summary Judgment (Tierney, Michael) (Entered: 11/14/2019)
* * *		
11/14/2019	70	MOTION for Summary Judgment, filed by Plaintiff Joseph A Kennedy. Oral Argument Requested. (Attachments: # 1 Proposed Order Granting Plaintiff's Motion for Summary Judgment)

JA 20

Date Filed	#	Docket Text
		Noting Date 12/6/2019, (Anderson, Devin) (Entered: 11/14/2019)
11/14/2019	71	DECLARATION of <i>Devin S. Anderson</i> re 70 MOTION for Summary Judgment by Plaintiff Joseph A Kennedy (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29)(Anderson, Devin) (Entered: 11/14/2019)
* * *		
12/19/2019	77	RESPONSE, by Defendant Bremerton School District, to 70 MOTION for Summary Judgment. (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	78	DECLARATION of MICHAEL B. TIERNEY IN RESPONSE

Date Filed	#	Docket Text
		TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed by Defendant Bremerton School District re 70 MOTION for Summary Judgment (Attachments: # 1 Exhibit 1 to Dec of MBT, # 2 Exhibit 2 to Dec of MBT, # 3 Exhibit 3 to Dec of MBT, # 4 Exhibit 4 to Dec of MBT) (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	79	DECLARATION of NATHAN GILLAM IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed by Defendant Bremerton School District re 70 MOTION for Summary Judgment (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	80	DECLARATION of JOHN POLM IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed by Defendant Bremerton School District re 70 MOTION for Summary Judgment (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	81	DECLARATION of JEFF BARTON IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed by Defendant Bremerton School

JA 22

Date Filed	#	Docket Text
		District re 70 MOTION for Summary Judgment (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	82	DECLARATION of AARON LEAVELL IN RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed by Defendant Bremerton School District re 70 MOTION for Summary Judgment (Tierney, Michael) (Entered: 12/19/2019)
12/19/2019	83	RESPONSE, by Plaintiff Joseph A Kennedy, to 63 MOTION for Summary Judgment. Oral Argument Requested. (Anderson, Devin) (Entered: 12/19/2019)
12/19/2019	84	DECLARATION of Devin S. Anderson re 83 Response to Motion by Plaintiff Joseph A Kennedy (Attachments: # 1 Exhibit Exhibit 30, # 2 Exhibit Exhibit 31, # 3 Exhibit Exhibit 32, # 4 Exhibit Exhibit 33, # 5 Exhibit Exhibit 34, # 6 Exhibit Exhibit 35, # 7 Exhibit Exhibit 36, # 8 Exhibit Exhibit 37)(Anderson, Devin) (Entered: 12/19/2019)
* * *		

JA 23

Date Filed	#	Docket Text
03/05/2020	91	ORDER granting 63 Defendants' Motion for Summary Judgment; denying 70 Plaintiff's Motion for Summary Judgment; signed by Judge Ronald B. Leighton.(DN) (Entered: 03/05/2020)
* * *		
03/11/2020	93	NOTICE OF APPEAL (20-35222) to Ninth Circuit re 92 Judgment by Court by Plaintiff Joseph A Kennedy. \$505, receipt number BWAADC-6204114 (cc: USCA) (Anderson, Devin) Modified on 3/12/2020 to add CCA# (GMR). (Entered: 03/11/2020)
* * *		

**Board Policy 2340 (Aug. 13, 1992)**

**Religious-Related Activities and Practices**

The Board recognizes that views and opinions regarding the relationship of the schools and religion are diverse. While community opinions are important in shaping policy, the Board must give primary credence to the United States and Washington state constitutions and the decisions made by the respective courts when establishing guidelines for making decisions regarding religious-related activities and practices. The Board further accepts the declaration of the state Board of Education that “all students . . . possess the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence.” To this end, the Board hereby establishes the following guidelines to preserve the rights of all students within the framework of the respective constitutions.

1. Factual and objective teaching about religion, the impact of religion and religious-based ideas and ideals may be included in classroom instruction in relation to the District’s educational goals and essential student learning objectives. It is inherent to the teaching of history, science, literature, social studies, intercultural education, human relations, art and music to include what various religions and religious movements have contributed to these fields.

Study of these disciplines, including the religious dimension, shall give neither preferential nor disparaging treatment to any single religion or to religion in general and must not be introduced or utilized for devotional purpose.



Criteria used to guide academic inquiry in the study of religion shall seek the same neutrality, objectivity and educational effectiveness expected in other areas of the curriculum. In addition, materials and activities should be sensitive to America's pluralistic society and should educate rather than indoctrinate. Instructional activities should meet the three-part test established and used by the US Supreme Court to determine constitutionality:

- a. the activity must have a secular purpose;
- b. the activity's principal or primary effect must be one that neither advances nor inhibits religion and
- c. the activity must not impose excessive involvement on the part of the school in order to maintain a neutral position toward the advancement of religion. This constitutional restriction shall not preclude a student from expressing his/her views relative to belief or non-belief about a religious-related issue in compositions, reports, music, art, debate and classroom discussion, when consistent with the assignment.

All religious-related instructional materials and/or activities must relate to secular student learning goals or standards.

Staff shall avoid assigning work that emphasizes the religious aspects of a holiday. Individual students should be allowed, at their own direction, to use religious personages, events or symbols as a vehicle for artistic expression, if consistent with the assignment.

2. A student may decline to participate in a school activity that is contrary to his/her religious convictions. School personnel will honor written requests from parents who want their child or children excused from any activity the parents deem objectionable and will provide an alternative activity for any child so excused.
3. If non curriculum-related student groups are permitted to meet on school premises immediately before or after school hours, students shall be permitted to meet to discuss religious, political, philosophical or other issues provided such group meetings are student-initiated and student-managed in compliance with Board policy.
4. Religious groups may rent school facilities under the policy providing for facilities rental. Activities of such groups shall be clearly separated from school sponsored activities so that the District does not support or appear to support the establishment of religion.
5. A student may distribute religious literature under the same conditions that other literature may be distributed on the campus provided that such distribution does not intrude on the operation of the school.
6. Material and/or announcements promoting religion may not be distributed by non-students or on behalf of groups or individuals who are not students.
7. Religious services, programs or assemblies shall not be conducted in school facilities during school hours or in connection with any school sponsored

or school related activity. Speakers and/or programs that convey a religious or devotional message are prohibited.

8. Musical, artistic and dramatic presentations which have a religious theme may be included in course work and programs on the basis of their particular artistic and educational value or traditional secular usage. They shall be presented in a neutral, non-devotional manner, be related to the objective of the instructional program and be accompanied by comparable artistic works of a nonreligious nature.

Music and drama of religious significance should be justified on the basis of its particular musical or dramatic value. The program should not be presented in such a way as to promote any particular religious belief or experience. Any program which constitutes the practice of religious rites or which might be interpreted as religious indoctrination must be avoided.

Since a variety of activities are included as part of a holiday theme, care must be exercised to focus on the historical and secular aspects of the holiday rather than its devotional meanings. Music programs shall not use the religious aspect of a holiday as the underlying message or theme. Pageants, plays and other dramatic activities shall not be used to convey religious messages. Religious symbols such as nativity scenes, if used, shall be displayed in conjunction with a variety of secular holiday symbols so that the total presentation emphasizes the cultural rather than religious significance of the holiday.

9. A student, upon the request of a parent, may be excused to participate in religious instruction for a portion of a school day provided the activity is not conducted on school property. (Credit shall not be granted for such instruction.)
10. Upon receipt of a parent(s) request, a student shall be excused from attending school in observance of a religious holiday.
11. Students may wear religious attire or symbols provided they are not materially and substantially disruptive to the educational process.
12. As a matter of individual liberty, a student may of his/her own volition engage in private, non-disruptive prayer at any time not in conflict with learning activities. School staff shall neither encourage nor discourage a student from engaging non-disruptive oral or silent prayer or any other form of devotional activity.
13. Commencement exercises shall be free from sectarian influence.
14. There shall be no school sponsorship of baccalaureate services. Interested parents and students may plan and organize baccalaureate exercises provided that the service is not promoted through the school and staff, and student participation is voluntary.
15. NJROTC ceremonies and/or activities shall be non-sectarian in nature. Traditions such as invocation and benediction observances which are non-denominational in nature may be included as

part of the military procedure used in events such as annual inspection, pass-in-review, etc.

Students, parents and staff who are aggrieved by practices or activities conducted in the school or District may register their concern with the building principal or District Superintendent.

Legal Reference:	US Constitution	First Amendment, Fourteenth Amendment
	Wash Constitution	Article I, § 11
	Wash Constitution	Art. 9, Sec. 4 and Art. 26

Bremerton School District

Adopted:	<u>11/14/85</u>	_____	_____
Revised:	<u>10/11/90</u>	<u>10/15/98</u>	_____
Affirmed:	<u>4/23/87</u>	<u>1/11/90</u>	<u>8/13/92</u>

**Assistant Coach Responsibilities (Feb. 6, 2008)**

**FUNCTION:** Provide assistance to the Head Coach.

**SUPERVISOR:** Head Coach, Athletic Director, and Principal

1. Assist in the development of the athletic program as directed by the Head Coach.
2. Assume those duties as assigned by the Head Coach, including staff meetings.
3. Assist the Head Coach in all organizational matters at the beginning of a particular sport season. Know and enforce current district guidelines for transportation of students to school sponsored events.
4. Know and enforce current district guidelines for transportation of students to school sponsored events.
5. Assist Head Coach with his/her supervisory responsibilities and/or supervise the team assigned to him/her.
6. Accompany and direct all games at home or out of town for team assigned to his/her supervision.
7. Obey all the Rules of Conduct before players and the public as expected of a Head Coach.
8. Assume the responsibility of the position of Head Coach in the event of his/her absence, if designated.
9. Assist in the upkeep and inventory of equipment.
10. Assume reasonable scouting duties as assigned by the Head Coach.

JA 31

11. Procure and keep up to date a first aid/CPR card as required by WIAA.
12. Treat all injuries with discretion, administering first aid when deemed necessary.
13. File accident reports when applicable.
14. Supervise all dressing rooms as designated.
15. Recommend any disciplinary action to the Head Coach.
16. Report results of contests for which responsible to local news media.
17. Adhere to Bremerton School District policies and administrative regulations.
18. Keep abreast of new knowledge, ideas, and techniques relating to his/her sport.
19. Have understanding of rules and regulations regarding his/her sport as prescribed in the WIAA Handbook.
20. Emphasize safety precautions and be aware of training and injury precautions.
21. Communicate any individual or team “problems” to the Head Coach immediately.
22. Provide for care and proper use of facilities at home and out of town.
23. Recommend additions and/or improvements’ for the care and maintenance of facilities.
24. Supervise facility preparation prior to home events.
25. Recommend equipment to be purchased.

JA 32

26. Recommend student athletes for letters, certificates, or special awards who have fulfilled requirements.
27. Check student attendance on the day of games.
28. Perform such other related duties as may be assigned.



**Head Coaches Responsibilities (Feb. 23, 2011)**

**FUNCTION:** Provide leadership, supervision, and organization of a specific interscholastic activity.

**SUPERVISOR:** Athletic Director, Principal

1. Report to the Athletic Director the need for maintenance and repair of equipment, and report any lost, damaged, or stolen equipment.
2. Arrange for cleaning, storing, and inventorying all equipment.
3. Disallow participation of athletes in practices until they have been properly cleared through the Athletic Director's office, i.e. physical, insurance form/waiver, concussion waiver, emergency card, parent permission form, ASB card, and eligibility.
4. Organize, direct, and supervise all practice sessions.
5. Procure and keep up to date a first aid/CPR card as required by the WIAA. Keep current with all WIAA Coaching Standards requirements.
6. Treat all injuries with discretion, administering first aid when deemed necessary and complete accident reports when applicable and in a timely manner.
7. Know and enforce current district guidelines for transportation of students to school sponsored events. Inform assistant coaches of their responsibilities for team transportation.
8. Accompany and direct the varsity team in all interscholastic activities at home or out of town and be responsible for the conduct of the team and all student helpers at such activities.

JA 34

9. Designate one or more of the assistant coaches to be responsible for teams other than the varsity.
10. Directly supervise, or designate an assistant coach to supervise, all dressing rooms and secure all facilities at the close of each practice.
11. Determine that dressing rooms are in clean condition after out of town games.
12. Prepare a budget for his/her sport as directed and be aware of Associated Student Body (ASB) funding procedures, including recommendations for equipment and supplies.
13. Supply the Athletic Director a roster of participants as soon as possible at the beginning of each sport season.
14. Recommend requirements for an athletic letter and submit to the Athletic Director in writing.
15. Recommend student athletes who have fulfilled the requirements for an athletic letter, certificate, or trophy.
16. Apply discipline in a fair, positive manner as outlined in the student Athletic Handbook, and file discipline reports with the Athletic Director.
17. Responsible for care and proper use of facilities both home and out of town.
18. Recommend additions and/or improvements for the care and maintenance of facilities.
19. Report the outcome of contests to local news media.
20. Provide information for programs upon request.
21. Attend appropriate coaches' meetings and the required WIAA rules clinic where applicable

(head coach may send a designee with approval of the Athletic Director).

22. Adhere to Bremerton School District policies and administrative regulations.
23. Select and instruct team managers, trainers, scorekeepers, and statisticians.
24. Provide each student athlete with a written copy of all rules and regulations that are in addition to the information in the Student Handbook. Provide and review the Student Athletic Handbook with each student athlete and his/her parent, when possible.
25. Provide the Athletic Director with a copy of all general correspondence and bulletins to student athletes and parents/guardians.
26. Recommend personnel for assistant coaching positions to the Athletic Director and the Principal.
27. Submit names to the Athletic Director and gain district clearance of a non-district person wishing to volunteer his/her services as a coach or student supervisor. Volunteer must fill out all volunteer forms, complete fingerprinting process and have a current first aid/CPR card.
28. Keep abreast of current trends, ideas and techniques relating to his/her particular sport.
29. Have an understanding of rules and regulations regarding his/her sport as published in the WIAA Handbook.
30. Have knowledge of the WIAA casebook guidelines.

JA 36

31. Exercise sound and discretionary judgment relative to his/her team, both off and on the field, and use proper conduct before the public and players at all times.
32. Check student attendance on the day of games.
33. Responsible for player behavior both on and off the field.
34. Coaches must sign all written correspondence to parents and students.
35. Hand out, collect and keep on file signed safety guidelines from each participant prior to participation in the sport. (Participants may attend informational meetings prior to returning the signed safety guidelines form.)
36. Perform such other related duties as may be assigned.

**Bremerton JV Football Schedule (2015)**

\* \* \*

Date	Opponent	Result
9/8	Sequim (Sequim, WA)	Report Final
5:00p	Game Details: Bremerton Memorial Stadium	Score
9/21	Olympic (Bremerton, WA)	Report Final
5:00p	Game Details: Silverdale Stadium	Score
	Rivalry Game	
9/28	Port Angeles (Port Angeles, WA)	(W) 7-6
5:00p	Game Details: Bremerton Memorial Stadium	
10/5	@ Kingston (Kingston, WA)	Report Final
5:00p	Game Details: Kingston HS	Score
10/7	North Mason (Belfair, WA)	Report Final
5:00p	Game Details: Bremerton Memorial Stadium	Score
10/12	North Kitsap (Poulsbo, WA)	Report Final
5:00p	Game Details: Bremerton Memorial Stadium	Score
10/26	North Mason (Belfair, WA)	(W) 26-0
5:00p	Game Details: Bremerton Memorial Stadium	
11/12	@ Sequim (Sequim, WA)	Report Final
5:00p	Game Details: Sequim High School	Score

**BHS Varsity Football Schedule (2015)**

Date	Opponent	Result
9/4	Cleveland (Seattle, WA)	(L) 35-21
7:00p	Game Details: @ Rainier Beach HS	
9/11	@ Klahowya (Silverdale, WA)	(L) 7-0 (OT)
5:00p	Game Details: Silverdale Stadium	
9/11	@ Klahowya (Silverdale, WA)	Report
5:00p	Location: Klahowya High School	Final...
9/18	Olympic (Bremerton, WA)*	(L) 33-0
7:00p	Game Details: Bremerton HS	
9/25	@ Port Angeles (Port Angeles, WA)*	(W) 23-7
TBA	Location: Port Angeles High School	
10/2	Kingston (Kingston, WA)*	(L) 24-21
7:00p	Game Details: Bremerton Memorial Stadium	
10/9	@ North Kitsap (Poulsbo, WA)*	(L) 44-27
7:00p	Game Details: Phil Pugh Stadium	
10/16	Centralia (Centralia, WA)	(L) 29-21
7:00p		

JA 39

Game Details: Bremerton  
Memorial Stadium  
Homecoming

10/23 @ North Mason (Belfair, (W) 44-0  
7:00p WA)\*

Game Details: Phil Pugh  
Stadium

10/30 Sequim (Sequim, WA)\* (W) 27-20  
7:00p Game Details: Bremerton  
Memorial Stadium

11/3 Lindbergh (Renton, WA)\*\*\* (L) 28-17  
7:00p Game Details: South Kitsap

11/11 Kingston (Kingston, WA)\* Report  
1:04p Location: Bremerton High Final...  
School

**Letter From A. Leavell, to J. Kennedy  
(Sept. 17, 2015)**

September 17, 2015

Dear Mr. Kennedy:

As you are aware, the Bremerton School District has been conducting an inquiry into whether District staff have appropriately complied with Board Policy 2340, "Religious-Related Activities and Practices," particularly with respect to the Bremerton High School football program. That policy is intended to implement the District's obligation to ensure that the fundamental constitutional rights of all members of the District community are honored. I wish to thank you for your candid cooperation and assistance in that process.

The District's inquiry has revealed two problematic practices within the football program. First, we learned that you have a practice, at most games, of providing an inspirational talk at midfield following the completion of the game. Students from both Bremerton High School and the opposing team (along with coaches from the opposing team and sometimes other attendees of the game) are invited to participate in this activity. During the activity, you hold up a helmet from each team and speak while the students and other participants kneel. Your talks have included overtly religious references, and you acknowledged that they likely constitute prayer. You explained that you began kneeling at midfield following games when you first started coaching at BHS, and that over time students asked to join, with the activity evolving organically.



Second, you acknowledged that prior to most games, in the locker room, you lead the students and coaching staff in a prayer. You explained that this activity predated your involvement with the program.

Each activity has been voluntary. While students and others have either been invited or allowed to join in, you have not actively encouraged, or required, participation. Nevertheless, as I believe you now understand, both activities would very likely be found to violate the First Amendment's Establishment Clause, exposing the District to significant risk of liability.

The District's inquiry revealed that there has been little, if any, training of coaching staff regarding Policy 2340 or the broad range of issues related to religious conduct of District staff in relation to students. Many assistant coaches, including yourself, are not professional educators and thus likely have not been exposed to extensive education and training regarding the admittedly complex constitutional law issues arising in public education. Thus, while I am concerned that you continued the midfield postgame prayer in games on September 11 and 14, 2015, following direction from your head coach as well as the BHS athletic director to cease these activities, I also understand how these practices developed and persisted over time, and know that they have been entirely well intentioned.

That said, I believe we agree that going forward, it is imperative that clear parameters be established and consistently followed in order to ensure that the rights of all BHS community members are respected

and honored. Board Policy 2340 includes the following statement:

As a matter of individual liberty, a student may of his/her own volition engage in private, non-disruptive prayer at any time not in conflict with learning activities. School staff shall neither encourage nor discourage a student from engaging in non-disruptive oral or silent prayer or any other form of devotional activity.

This policy is intended to implement the District's obligations under the First Amendment to the United States Constitution, which reads:

Congress shall make no law respecting *an establishment of religion*, or *prohibiting the free exercise thereof*; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Many decades of federal court litigation, including decisions of the United States Supreme Court, have fleshed out the meaning of the First Amendment's Establishment Clause and Free Exercise Clause. In the public schools context, it is clear that schools and their employees may not directly prohibit students from participating in religious activities, nor may they require students to participate in religious activities. Further, it is equally clear that school staff may not indirectly encourage students to engage in religious activity (or discourage them from doing so), or even engage in action that is likely to be perceived as endorsing (or opposing) religion or religious activity. In short, schools and their employees, while

performing their job duties, must remain neutral—allowing non-disruptive student religious activity, while neither endorsing nor discouraging it.

As pertains to athletics, the federal courts have held that:

- Schools may not allow prayers to be read—even by students—over the public address system at even optional extracurricular events, such as football games—*Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)
- Schools may not allow coaches to initiate, lead or supervise student prayer—*Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995)
- Schools may not even allow coaches to participate in or appear to endorse religious activity that is entirely student-initiated—*Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008)

I recognize that you and all District employees possess fundamental free exercise and free expression rights under the First Amendment. However, the courts have held that where there is direct tension between the district's need to avoid an Establishment Clause violation and a school employee's free exercise or expression rights, the latter must yield so far as necessary to avoid school endorsement of religious activities. *Borden*, above; *Berger v. Rensselaer Central School Corp.*, 982 F.2d 1160 (7th Cir. 1993). The District is clearly bound by these federal precedents. Should the District disregard them, allowing conduct that violates the Establishment Clause, the District will be subjected to significant potential liability,

endangering precious funds needed to educate the District's students and sustain its important programs.

Therefore, the following clear standards apply and must be adhered to going forward:

- You may continue to provide motivational, inspirational talks to students before, during and after games and other team activity, focusing on appropriate themes such as unity, teamwork, responsibility, safety, endeavor and the like that have long characterized your very positive and beneficial talks with students.
- Your talks with students may not include religious expression, including prayer. They must remain entirely secular in nature, so as to avoid alienation of any team member.
- Students are free to initiate and engage in religious activity, including prayer, so long as it does not interfere with school or team activities. Student religious activity must be entirely and genuinely student-initiated, and may not be suggested, encouraged (or discouraged), or supervised by any District staff.
- If students engage in religious activity, school staff may not take any action likely to be perceived by a reasonable observer, who is aware of the history and context of such activity at BHS, as endorsement of that activity. Examples identified in the Borden case include kneeling or bowing of the head during the students' religious activity.

- You and all District staff are free to engage in religious activity, including prayer, so long as it does not interfere with job responsibilities. Such activity must be physically separate from any student activity, and students may not be allowed to join such activity. In order to avoid the perception of endorsement discussed above, such activity should either be non-demonstrative (i.e., not outwardly discernible as religious activity) if students are also engaged in religious conduct, or it should occur while students are not engaging in such conduct.

I understand that the foregoing parameters may not address every potential scenario. They are intended to ensure that existing problematic practices do not continue. I encourage you to raise any questions you may have about these parameters, or scenarios not clearly addressed by them, with your supervisors, and also invite you to address such questions directly to me. I am sincerely committed to honoring your rights and continuing your outstanding contributions to the BHS football program, while also ensuring that the District is not exposed to liability because we have inadvertently violated the rights of students or other community members. I am confident that we share these important goals, and can work together to achieve them going forward.

Sincerely,

[handwritten: signature]

Aaron Leavell, Superintendent  
Bremerton School District

JA 46

**Letter From A. Leavell to Community  
(Sept. 17, 2015)**

September 17, 2015

Dear Bremerton School District families, staff and community,

Our District recently learned that a member of our coaching staff was participating in religious prayer with our students on school property. Because of the constitutional concerns this raised, we hired an outside attorney to determine whether there was a need for training and clarification of the parameters around staff involvement in religious activities with students.

These concerns have now been resolved.

We are pleased that Joe Kennedy will continue coaching our student athletes, and we look forward to the game tomorrow night.

Our coaching staff can continue to provide motivational, inspirational talks to students before, during and after games and other team activity, focusing on appropriate themes such as unity, teamwork, responsibility, safety and endeavor. This is the heart of our athletics program.

However, talks with students may not include religious expression, including prayer. They must remain entirely secular in nature, so as to avoid alienation of any team member and, importantly, violate the Jaw and our Board policy.

Students are free to initiate and engage in religious activity, including prayer, so long as it does not interfere with school or team activities. Student religious activity must be entirely and genuinely

student-initiated, and may not be suggested, encouraged (or discouraged), or supervised by any District staff.

The District is bound by these federal precedents. Should the District disregard them, we would be subjected to significant potential liability, endangering precious funds needed to educate the District's students and sustain its important programs.

Moving forward, the District realizes we must take steps to make sure our staff members understand the implications of federal law. We will make sure coaching staff are provided ample training regarding this admittedly complex area of constitutional law. To be clear: The BHS football coaching staff's conduct has been entirely well-intentioned. It is up to the District to establish clear parameters that will ensure compliance with these laws (included on page 2 and 3 of this document).

While we certainly wish we had provided coaching staff with training and direction that might have avoided the current controversy, this process has been a learning experience - one that will surely continue - and I am optimistic that the BHS football program will continue to thrive within these newly clarified guidelines.

Sincerely,

[handwritten: signature]

Aaron Leavell, Ed.D

Superintendent

**BREMERTON POLICY AND LEGAL  
REFERENCES**

Board Policy 2340 includes the following statement:

As a matter of individual liberty, a student may of his/her own volition engage in private, non-disruptive prayer at any time not in conflict with learning activities. School staff shall neither encourage nor discourage a student from engaging in non-disruptive oral or silent prayer or any other form of devotional activity.

This policy is intended to implement the District's obligations under the First Amendment to the United States Constitution, which reads:

Congress shall make no law respecting *an establishment of religion*, or *prohibiting the free exercise thereof*; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Many decades of federal court litigation, including decisions of the United States Supreme Court, have fleshed out the meaning of the First Amendment's Establishment Clause and Free Exercise Clause. In the public schools context, it is clear that schools and their employees may not directly prohibit students from participating in religious activities, nor may they require students to participate in religious activities. Further, it is equally clear that school staff may not indirectly encourage students to engage in religious activity (or discourage them from doing so), or even engage in action that is likely to be perceived as



endorsing (or opposing) religion or religious activity. In short, schools and their employees, while performing their job duties, must remain neutral—allowing non-disruptive student religious activity, while neither endorsing nor discouraging it.

As pertains to athletics, the federal courts have held that:

- Schools may not allow prayers to be read—even by students—over the public address system at even optional extracurricular events, such as football games—*Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)
- Schools may not allow coaches to initiate, lead or supervise student prayer—*Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995)
- Schools may not even allow coaches to participate in or appear to endorse religious activity that is entirely student-initiated—*Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008)

The District of course recognizes that its employees possess fundamental free exercise and free expression rights of their own under the First Amendment. However, the courts have held that where there is direct tension between the district's need to avoid an Establishment Clause violation and a school employee's free exercise or expression rights, the latter must yield so far as necessary to avoid school endorsement of religious activities. *Borden*, above; *Berger v. Rensselaer Central School Corp.*, 982 F.2d 1160 (7th Cir. 1993). The District is bound by these federal precedents. Should the District disregard

them, allowing conduct that violates the Establishment Clause, the District will be subjected to significant potential liability, endangering precious funds needed to educate the District's students and sustain its important programs.

The District's inquiry into this matter did reveal practices that are not allowed under federal precedent. However, it also revealed that coaching staff have not been provided ample training regarding this admittedly complex area of constitutional law. **To be clear: The BHS football coaching staff's conduct has been entirely well-intentioned.**

Going forward, the District has established clear parameters that will ensure compliance with the District's obligations under the Establishment Clause, while honoring and respecting the fundamental personal free exercise and free expression rights of students and the coaching staff. These parameters will continue to allow students to engage in voluntary, student-initiated religious activity; allow coaching staff to continue to deliver the inspirational, motivational, team-building talks to students that have been such an asset not only to BHS teams but to those of opposing teams and their coaching staffs; and allow our staff to engage in their own religious activities in a manner that will not run afoul of the United States Constitution.

**Email A. Leavell to J. Barton and J. Polm re:  
Today (Sept. 18, 2015)**

can one of you guys give Nate an invitation to come down and talk to us for 10 minutes during his prep? It has to do with what Joe (Or anyone else for that matter) can and can't do and I just want to take a few minutes to explain it to him. He does not need to bring representation as he is not accused of doing anything incorrectly. Jeff, when the community comes down onto the field tonight after the game, we will not be able to prevent that from happening. I would like you to be out on the field so you can hear what is being said. I will be there but not on the field. If there are coaches or staff that choose to pray publicly this evening, we will not create a scene at this event. However, if it does happen, we will need to follow up immediately on Monday. We will cover all this in our meeting.

Aaron Leavell Ed.D.

\* \* \*

**Email from Aaron Leavell to BSD Board  
Members re: Assistant Coach (Sept. 19, 2015)**

\* \* \*

Good Evening Board of Directors:

I am pleased to inform you that Coach Kennedy did not lead his team in prayer tonight, but rather, led a great post-game motivational speech. There was an above-average crowd at the game, but not overwhelming as we expected. The post-game gathering was conducted well, and did not last that long. Most of the media reports I am hearing and seeing thus far seem to be positive in nature, this time with the understanding of what the district must enforce. I must say though, I am disappointed in Representative Jesse Young for his participation in this without contacting me first and putting himself on the news, but I will reach out to he and Michelle Caldier tomorrow. Thank you for your support. Have a good evening.

Sincerely,

Aaron

\* \* \*

**Drew Mikkelsen, *Bremerton HS Coach*  
*Doesn't Pray, But Speaks After Game, K5 News*  
(Sept. 19, 2015)**

The Bremerton School District will not punish a football coach for leading student prayers, as long as Joe Kennedy stops leading the prayers.

BREMERTON, Wash. -- The Bremerton School District said it will not punish a football coach for having prayed after games, as long as Joe Kennedy stops leading the prayers from this point forward. So as the Bremerton Knights took the field on Friday evening, all eyes were on Kennedy, who is an assistant coach for the team.

In the end, Kennedy chose to adhere to the district policy. He addressed his players and the crowd after the game, but didn't pray. Many students responded to his passionate speech -- which didn't mention God -- by saying "Amen."

"I don't even know if there's words for that," Kennedy said, getting emotional when asked what the players' support meant to him. "These guys are so incredible. I love every one of them."

Nearly an hour after the game, Kennedy told KING 5 he waited until the lights were out and he was the only person left in the stadium. Then, he walked to the 50-yard-line, alone, and bowed his head in prayer. The decision to adhere to district policy did not come easy for the longtime coach, who has prayed after games for years.

"My personal faith is my personal faith, and everybody on the team knows where I stand," he said.

Earlier in the day he said he planned to follow the district policy, but would not ensure that he could.

“You know the Lord works in mysterious ways,” said Kennedy, “I have been a loose cannon from time to time.”

He said he hoped he wouldn’t start praying following the game—and ultimately stuck to that plan. He didn’t bow his head, and his post-game speech included no mention of religion or faith.

The speech went as follows:

“This is something we said in the Olympic league long ago: everybody that comes out here takes a knee. Because these are the warriors that competed for the past 48 minutes. And no matter what that score says, at the end of the game, we are about the legacy that we’re leaving, and everybody that came before, behind—it’s all about the young men we’re developing today, and all about the sport. I love you guys, the coaches give everything for you,” Kennedy said. “This is about the game, this is about the students, and developing our youth.”

Students began cheering as Kennedy’s speech came to a close.

“We put this place on the map,” he said, as people in the crowd began applauding and saying “Amen”.

Kennedy said after coaching in the district for nine years, he did not know coaches were prohibited from encouraging (or discouraging) student prayers.

Kennedy said he was told he’d be fired if he kept leading the prayers he’s always held after games. He was typically joined by coaches and players from both teams.

If he had prayed with players Friday night, Kennedy said he expected to lose his job.

That's why people packed the stands at the game, to show their support.

"I think a coach after a ball game should be able to go to the 50-yard-line and say a prayer if he chooses to," said Kathy Sorensen. "It's very sad to me that our world has come to this."

Representative Jesse Young (R-Bremerton) said he plans on introducing legislation to give coaches immunity when it comes to engaging with students in prayer.

Kennedy said he would be glad to testify in Olympia in favor of the bill.

He respects the law and policy, but thinks what he has been doing with players is harmless.

"If a kid is wanting to take a knee and a coach comes over and prays with him, that's a powerful thing. That's supporting the kid," said Kennedy.

Kennedy said his prayers are optional.

He said one of the team captains does not believe in God and does not have to participate.

Wesley Bonetti, co-founder of the Kitsap Atheists & Agnostics, said while the coach considers the prayers voluntary, his players may feel differently.

"They could feel pressured to join if they didn't believe or if they believed something else or if they wanted to pray in private," said Bonetti.

**Coach and Volunteer Coach Agreement  
(Oct. 7, 2015)**

*“Never place the value of winning above the value of instilling of the highest ideals of character.”—WIAA Coaching Code of Ethics*

I am honored that the Bremerton School District has entrusted me to be a coach, mentor and role model for the student athletes in the Bremerton School District. As such, I agree to:

- exhibit sportsmanlike conduct at all times
- treat all athletes with respect, including opponents
- utilize positive motivational strategies to encourage athletic performance
- understand that parents are their athletes’ advocates—I will treat them with high regard and communicate effectively, including returning phone calls and emails in a timely fashion
- ***understand that District provided email must be used to communicate; personal email is not an acceptable form of communication to staff, athletes or parents***
- always approach officials with composure—I understand that I am constantly being observed by others
- uphold all health and safety standards, providing immediate attention to injured athletes
- honor the power of the press—I will maintain positive media relations.
- apply rules consistently to all athletes



- have read and understand all policies and procedures
- understand that the athletics program is an integral part of the total educational process—I will provide support for students' ongoing academic success.

Above all, I agree to create good athletes and good human beings.

**I understand that a violation of these agreements may result in disciplinary action up to and including discharge.**

<u>[handwritten:</u> <u>Joe Kennedy]</u>	<u>[handwritten:</u> <u>signature]</u> _____	<u>[handwritten:</u> <u>date]</u> _____
Print Name	Signature	Date

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**Email Chain Between A. Leavell and  
J. Kennedy re: Follow up on school policy  
(Oct. 7, 2015)**

To: Kennedy, Joseph

From: Aaron Leavell

Sent: Wed 10/7/2015 12:47:58 AM (UTC)

Subject: Re: Follow up on school policy

Ok thanks Joe! I have removed your appointment from calendar for Thursday! Glad you got to meet with Jeff. Go Knights! Take care,

Aaron

On Tue, Oct 6, 2015 at 1:43 PM, Kennedy, Joseph

\* \* \* wrote:

Thursday will not work for me. Not a big deal anymore. Jeff Barton came over yesterday and I signed the coaching agreement (that was a really sore spot for me).

Thanks for getting him there to do that. I really like that guy ... but his paper management needs some help. LOL

Hey great article in the paper!! Nice job!!! I shared it on my Facebook page! Proud of BHS!!!!

Go Knights!!

\* \* \*

On Fri, Oct 2, 2015 at 8:33 AM, Kennedy, Joseph

\* \* \* wrote:

Do you have time to meet? I would like to discuss this further. I thought we were in agreement that the district's policy was not clear enough and that in order to protect all employees from falling into this type of

situation, the policy was going to reflect what was in my Letter of Direction.

I understand that the district does not want to be found in violation of the Establishment Clause, however I personally do not believe that prayer after a game is completed and the team leaves the field, then comes back onto the field to join me is in violation of anything. I will continue to follow the Letter of Direction but I am looking into challenging the Letter of Direction. I believe the Court should see how far they are willing to reach with the establishment clause vs free exercise clause.

I would like to meet with you today if possible, I would like to share my concerns with you in person.

Thanks Aaron

\* \* \*

From: Aaron Leavell \* \* \*

Sent: Thursday, October 01, 2015 3:13 PM

To: Kennedy, Joseph \* \* \*

Cc: Lynn Caddell \* \* \*

Hey Coach:

Nice hearing from you. I hope you are doing well. In regards to your question about district policy, there has not been any changes or talks of making changes. Until the Supreme Court or Federal legislation changes, we will not be making any alterations as to how we expect our employees to conduct themselves with students and athletes in this regard as our policy reflects the implementation of those rulings. So, there is no new policy revision to review at this point. To address your question about a document for coaches to

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sign that informs them of these rules and other things pertaining to their employment conditions, the answer is yes. We created a form with the necessary information on it and are sending it out to the buildings for staff to review and sign and through the athletic departments at BHS and MVMS for coaches to review and sign. As far as feedback goes on how everything was handled, I wish we could hit the restart button at times in how you were informed of what you can and can't do as a public school employee in regards to leading prayer. That being said, a lot of good has come from this situation and we are doing a better job of planning how to include this important information into employee handbooks, beginning of year meetings with staff, mandatory documents, etc. I appreciated your willingness to listen, to take time off to visit with us about the situation and to come to an understanding so that we could all have a win in the end for the sake of our kids, coaches and community, and be compliant with our laws and policies. I have been made aware that there are two local legislators that are drafting proposed legislation to make alternations to the Supreme Courts rulings on employees leading prayer - so stay tuned for that. Thanks for checking in Joe as I appreciate it - hope to see you tomorrow night at the game! Go Knights!

Sincerely,

Aaron

On Thu, Oct 1, 2015 at 8:38 AM, Kennedy, Joseph

\* \* \* wrote:

Thank you both again for working though that rough patch with me! Now that things have cooled down, I am following up on the changes to the district's

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policy on prayer. Did the policy get changed? I would like to see the policy if it has. Also is there something that coaches sign every year, that says we will follow the districts policies? I still have not signed anything (which should be important if you want us to follow the districts policies).

If either one of you have any feedback for me on the way everything was handled, I would appreciate it (good or bad ... I constantly seek improvement).

Thanks again and I really appreciate both of you very much!

Be Blessed!

\* \* \*

**Letter From H. Sasser to A. Leavell re: Request  
for Coach J. Kennedy to Continue Post-Game  
Prayer (Oct. 14, 2015)**

\* \* \*

Dear Superintendent Leavell and Board Members,

Bremerton High School (BHS) football coach Joseph “Joe” Kennedy retained Liberty Institute and volunteer counsel Anthony J. Ferate (BHS ‘94) to represent him in this matter. Please direct all correspondence related to this matter to Liberty Institute at the contact information provided below.

Coach Kennedy has been a football coach at BHS since August 2008. Currently, Coach Kennedy serves as the varsity assistant coach, and as the junior varsity head coach. Since August 2008, Coach Kennedy has engaged in a private religious activity whereby at the conclusion of each football game, he walks to the 50-yard line and prays. By letter dated September 17, 2015, you directed Coach Kennedy to cease this private religious expression. This letter constitutes Coach Kennedy’s request for a religious accommodation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, allowing him to continue his post-game personal prayer, and that you rescind the directive in your September 17 letter that he cease his post-game personal prayer. The First Amendment to the United States Constitution and federal statutory law protect Coach Kennedy’s right to private religious expression following BHS football games. Indeed, Bremerton School District’s attempts to ban or prohibit Coach Kennedy’s private religious expression violate both the First Amendment to the

U.S. Constitution and Title VII of the Civil Rights Act of 1964.

In order to understand why Coach Kennedy's private religious expression is constitutionally protected, it is important to understand the factual context surrounding Coach Kennedy's practice. Coach Kennedy is motivated by his sincerely-held religious beliefs to pray following each football game. Coach Kennedy's inspiration for doing so came about after he watched the film "Facing the Giants." After watching the film, Coach Kennedy felt compelled by his religious faith, and his sincerely-held religious beliefs, to begin thanking God for the young men he is privileged to coach.

### **Factual Background**

Since August 2008, Coach Kennedy's practice has remained largely unchanged. Coach Kennedy's first post-game prayer occurred on his very first game as a coach. After the game ended and his official coaching duties ceased, Coach Kennedy walked, alone, to the 50-yard line where he audibly spoke a short prayer of thanksgiving for player safety, fair play, and spirited competition. Coach Kennedy did not announce what he was doing, nor did he invite anyone to join him. He quietly, but audibly, prayed alone, away from the coaches, players, and fans. This practice continued for several games until several students approached Coach Kennedy and asked if they were permitted to be there when he prayed, to which he responded, "it's a free country, you can do whatever you want to do." Thereafter, after subsequent games, students continued to voluntarily go where Coach Kennedy

prayed. Members of the opposing team also sometimes went to where Coach Kennedy prayed.

Although Coach Kennedy's prayers are verbal, he does not pray in the name of a specific religion or deity, and he does not say "amen." Each post-game prayer lasts approximately fifteen to twenty seconds, during which Coach Kennedy is unaware of who may or may not be in the vicinity. Coach Kennedy's sole intent, as motivated by his sincerely-held religious beliefs, is to say a brief prayer of thanksgiving and then move on. Coach Kennedy has never received a complaint about his post-game personal prayers.

To summarize, Coach Kennedy engages in private religious expression during non-instructional hours, after his official duties as a coach have ceased. He neither requests, encourages, nor discourages students from participating in, or coming to where he prays. His prayers neither proselytize nor denigrate the beliefs of others. And he has never received a complaint about his post-game personal prayers. Under these circumstances, there is no constitutional prohibition against Coach Kennedy's private religious expression, regardless of whether students voluntarily come to the location where he is praying.

**Coach Kennedy's Private Religious Expression is Constitutionally Protected**

Bremerton School District Board Policy 2340, "Religious Activities and Practices," is largely silent on the First Amendment rights of District employees. But the United States Supreme Court rejected the notion that public school employees relinquish First Amendment rights by virtue of their government employment. *See Tinker v. Des Moines Indep. Cmty.*



*Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”); *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).

The Supreme Court has repeatedly held that the First Amendment requires public school officials to be neutral in their treatment of religion, showing neither favoritism toward nor hostility against religious adherents. See *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947). Accordingly, the First Amendment forbids religious activity that is sponsored by the government but protects religious activity that is initiated by individuals acting privately, as is the case with Coach Kennedy. As the Court explained in several cases, “there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect.” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 250 (1990) (plurality op.).

The First Amendment to the United States Constitution prohibits the government from “abridging the freedom of speech” of private individuals. U.S. Const., amend. I. This prohibition applies to state and local governments through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940); *Lovell v. Griffin*, 303 U.S. 444, 450 (1938). The government also may not suppress or exclude the speech of private individuals for the sole reason that their speech is religious. See *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Rosenberger v. Rector & Visitors of the Univ. of Va.*,

515 U.S. 819 (1995); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753 (1995); *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Widmar v. Vincent*, 454 U.S. 263 (1981). As the Supreme Court explained:

[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. . . . Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

*Pinette*, 515 U.S. at 760. Furthermore, the Court held that “the First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb's Chapel v. Ctr. Moriches Sch. Dist.*, 508 U.S. 384 (1993).

Your September 17 letter states that these bans on religious expression are necessary to avoid an Establishment Clause violation, an argument the Supreme Court expressly questioned. See *Good News Club*, 533 U.S. at 113 (questioning “whether a State’s interest in avoiding an Establishment Clause violation would justify viewpoint discrimination”). As support for this dubious legal argument, you cite to *Borden v. Sch. Dist. of the Twnshp. of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008). But that same opinion you cite states “not every religious display of a school official will have the necessary ‘history and context’ to be an Establishment Clause violation.” *Id.* at 166. Indeed, “speech by a public employee, *even a teacher*,

does not always represent, or even appear to represent, the views of the state.” *Tucker v. Calif. Dep’t of Educ.*, 97 F.3d 1204, 1213 (9th Cir. 1996) (emphasis added). Here, Coach Kennedy’s private religious expression cannot be said to invoke the imprimatur of the government.

The case of *Wigg v. Sioux Falls Sch. Dist.*, 382 F.3d 807 (8th Cir. 2004), is instructive. In *Wigg*, the court affirmed the right of a public elementary school teacher to participate in an explicitly Christian, proselytizing, after-school program in the same school in which she taught. The facts of *Wigg*, when compared to the present matter, demonstrate the wrongness of Bremerton School District’s directives to Coach Kennedy:

<b><i>Wigg</i></b>	<b><i>Coach Kennedy</i></b>
Public school employee	Public school employee
Elementary school (2nd-3rd grade)	Secondary school (9th-12th grade)
Proselytizing after school	Private, personal prayer after football games
In classroom	In football stadium

The *Wigg* court concluded that the school district’s “effort to avoid an establishment of religion . . . unnecessarily limits the ability of its employees to engage in private religious speech on their own time.” *Id.* at 814. The court found the school’s policy “preventing [school] employees from participating in religious-based activities [was] viewpoint discriminatory and, thus, per se unconstitutional.” *Id.* The court held the teacher’s after school proselytizing was constitutionally

protected as private speech that did not put the school district at risk of violating the Establishment Clause. *Id.* at 815.

There can be no legitimate concern that the District is somehow establishing religion because it merely permits one of its coaches, on his own time, to say a short personal prayer after a football game. “The proposition that schools do not endorse everything they fail to censor is not complicated.” *Mergens*, 496 U.S. at 250 (plurality op.). As the U.S. Court of Appeals for the Ninth Circuit explained, “the desirable approach is not for schools to throw up their hands because of the possible misconceptions about endorsement of religion,” finding instead that it is

[f]ar better to teach [students] about the [F]irst [A]mendment, about the difference between private and public action, about why we tolerate divergent views . . . . The school’s proper response is to educate the audience rather than squelch the speaker. Schools may explain that they do not endorse speech by permitting it. If pupils do not comprehend so simple a lesson, then one wonders whether the [] schools can teach anything at all. Free speech, free exercise, and the ban on establishment are quite compatible when the government remains neutral and educates the public about the reasons.

*Hills v. Scottsdale Unified Sch. Dist.*, 329 F.3d 1044, 1055 (9th Cir. 2003) (quoting *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299-1300 (7th Cir. 1993)).

No reasonable observer could conclude that a football coach who waits until the game is over and the players have left the field and then walks to mid-field to say a short, private, personal prayer is speaking on behalf of the state. Quite the opposite, Coach Kennedy is engaged in private religious expression upon which the state may not infringe. In fact, any attempt by Bremerton School District to ban or prohibit Coach Kennedy—or any private citizen—from praying violates the First Amendment. In *Tucker*, the U.S. Court of Appeals for the Ninth Circuit held that the California Department of Education’s ban on religious advocacy and displays in the workplace—even when the stated reason was to avoid the appearance of supporting religion—was unconstitutional. The District’s ban on Coach Kennedy’s private religious expression is likewise unconstitutional.

Under Title VII of the Civil Rights Act of 1964, Bremerton School District may not discriminate against Coach Kennedy on the basis of his religious exercise, and it must accommodate his sincerely-held religious beliefs. Title VII provides that “it shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin ....” 42 U.S.C. § 2000e-2(a). Additionally, Title VII requires Bremerton School District to accommodate its employees’ religious practices. 42 U.S.C. § 2000e(j); 29 CFR § 1605.2. Therefore, you must permit Coach Kennedy to continue his post-game prayers.

### **Students May Voluntarily Come to Where Coach Kennedy Prays**

In your September 17 letter, you acknowledged that Coach Kennedy does not encourage or require participation in his practice of private, post-game prayer. You also acknowledge that Bremerton School District Board Policy 2340 permits BHS students to voluntarily engage in prayer. But your directive to Coach Kennedy is inconsistent with Board Policy 2340: “You and all District staff are free to engage in religious activity, including prayer . . . [but] students may not be allowed to join such activity.” You also prohibit Coach Kennedy from joining student-initiated prayers. Incredibly, you take the extra step of banning Coach Kennedy from bowing his head or even being physically present where students may be praying. This too is unconstitutional.

This is tantamount to a declaration that Coach Kennedy, while praying as you concede he is allowed to do, must flee the scene if students voluntarily come to the same area and pray as well. There is no requirement in the law that Coach Kennedy flee from students if they voluntarily choose to come to a place where he is privately praying during personal time. According to the U.S. Department of Education’s “Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools” (“Guidance”), teachers may “take part in religious activities where the overall context makes clear that they are not participating in their official capacities.” The Guidance also provides a solution for schools seeking to avoid the appearance of school sponsorship or endorsement of student speech: school officials

“may make appropriate, neutral disclaimers to clarify that such speech (whether religious or non-religious) is the speaker’s and not the school’s.” Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools, U.S. Dept. of Educ., Feb. 7, 2003, [http://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited October 12, 2015). This simple, constitutionally sound solution also applies to school employee speech, and is far less restrictive than Bremerton School District’s outright ban on Coach Kennedy’s private religious expression, and its requirement that he flee should students voluntarily appear where he happens to be praying. Coach Kennedy, or another school official, can simply clarify that the prayer is the speaker’s private speech, and not that of the School District.

### **Conclusion**

For the reasons provided herein, there is no lawful prohibition against Coach Kennedy’s practice of saying a private, post-game prayer. The prayers are Coach Kennedy’s private religious speech, and no reasonable observer could conclude that BHS sponsors, endorses, or encourages student participation. To the extent that students voluntarily choose to join Coach Kennedy, the District must not discriminate against, prohibit or interfere with student-initiated religious activities. A simple disclaimer that Coach Kennedy’s prayers are his private speech will suffice to avoid any constitutional concerns.

Beginning on October 16, 2015, Coach Kennedy will continue his practice of saying a private, post-

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game prayer at the 50-yard line. We respectfully request that, by no later than 5:00pm on October 16, 2015, you rescind the directive in your letter of September 17, 2015, that he cease doing so, and that you permit Coach Kennedy to continue his practice of saying a private, post-game prayer at the 50-yard line.

Sincerely,

[handwritten: signature]

Hiram Sasser

Deputy Chief Counsel



**Mike Carter, *Bremerton Football Coach Vows to Pray After Game Despite District Order*, Seattle Times (Oct. 14, 2015)**

A Bremerton High School football coach said Wednesday he will pray at the so-yard line after Friday's homecoming game against Centralia, disobeying the school district's orders and placing his job at risk.

The conservative Texas-based Liberty Institute has taken up coach Joseph Kennedy's cause, and its lawyers say they will sue in Bremerton School District if it takes action against him. The institute claims Kennedy's First Amendment right to religious freedom is being violated by the school district's order.

The district, however, argues that Kennedy's long-standing practice of kneeling and praying at the so-yard line after games, often among a crowd of players and other coaches, violates the Establishment Clause of the First Amendment, which precludes the government from making any law "respecting an establishment of religion." It also forbids the government from favoring one religion over another.

On Sept. 17, District Superintendent Aaron Leavell wrote Kennedy that the practice has to stop.

Leavell said that while the district has concluded that his actions were "entirely well-intentioned," it has also determined that they are in violation of district policies and the law and are "exposing the district to significant risk of liability."

Kennedy, who describes himself as a God-fearing former Marine, said he believes he is "helping these

kids be better people.” He says he not a lawyer and “I don’t know the Constitution.”

However, he said, “I spent my years defending it.”

Kennedy said he was a troubled young man before entering the Marine Corps where he spent 20 years and served in operations Desert Storm and Desert Shield in Iraq. He retired from the Marines as a gunnery sergeant and, in 2008, got a job as an assistant coach at Bremerton High School.

He became an active Christian after watching the evangelical film “Facing the Giants”—about a faith-challenged high-school football coach—and has held his postgame ritual at midfield after each game for a motivational talk and prayer ever since.

Kennedy said he has never required his athletes to join him and that nobody is punished if they chose not to attend.

However, he also acknowledged that he has also routinely held pregame locker-room prayers, which he now agrees involved a “captive audience” and which have also raised concerns of district officials. Going forward, Kennedy said at a news conference Wednesday, he will no longer hold those pregame prayers.

However, after talking to a lawyer friend—who put him in touch with the Liberty Institute—he plans to continue his postgame practice, which he had briefly stopped after talking to the superintendent and receiving the letter.

Hiram Sasser, the deputy chief counsel at the Plano, Texas-based institute, stood with the coach Wednesday and referred to a six-page letter that says

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Kennedy is within his rights to practice his faith when and as he sees fit.

**Letter From J. Ganson to H. Sasser re:  
Bremerton School District/Joseph Kennedy  
(Oct. 16, 2015)**

\* \* \*

Dear Mr. Sasser:

We are attorneys representing the Bremerton School District in Bremerton, Washington. The District has provided us with a copy of your letter to the District's Superintendent and Board of Directors, dated October 14, 2015, for response. In accordance with the Washington State Rules of Professional Conduct Rule 4.2 (and the corresponding provision of the Oklahoma Rules of Professional Conduct), please direct all further communication regarding this matter to this office.

The District has worked in good faith with Mr. Kennedy to identify clear guidelines by which he is able to exercise his fundamental religious freedoms, while respecting and avoiding any violation of the constitutional rights of others in the school community. The District remains willing to discuss and clarify those expectations. However, it must be understood that the guidelines and directives provided by the District to Mr. Kennedy must be adhered to.

In large part, the District agrees with your characterization of existing federal case law under the First Amendment. However, we believe that you materially misunderstand key facts in this case.

First, in describing the development of Mr. Kennedy's practice of praying immediately following Bremerton High School football games, you assert

that he did not invite anyone to join him in his “short prayer of thanksgiving for player safety, fair play, and spirited competition,” and that “he does not pray in the name of a specific religion or deity, and he does not say ‘amen.’” While this may presently be the case following the District’s guidance to Mr. Kennedy on September 17, 2015, to be clear, the opposite was true prior to that direction. Mr. Kennedy acknowledged during the District’s inquiry that, among others, coaching staff from other teams were invited to join in his post-game prayer. Mr. Kennedy also acknowledged that the activity was, indeed, prayer. And contrary to your assertion, local media published video of Mr. Kennedy beginning his post-game address on September 14, 2015, with the word “Lord,” and ending it with the word “amen.” That Mr. Kennedy impermissibly led students in prayer immediately following the end of football games prior to the September 17 guidance is without question.

Of course, following receipt of written guidance on September 17, 2015, Mr. Kennedy has confirmed his understanding of it (including signing a statement of expectations that all District employees were asked to acknowledge), and to the District’s knowledge, he has complied with the District’s directives. It is my understanding that Mr. Kennedy has provided short, inspirational, secular talks to students and coaches immediately following games. This is consistent with the guidance the District provided to Mr. Kennedy, and has been an entirely positive and inclusive activity.

The more important factual inaccuracy in your letter and analysis is your repeated characterization

of Mr. Kennedy's post-game prayers (prior to September 17) or talks (following that date) as occurring "on his own time," after his duties as a District employee had ceased. In fact, those talks occur immediately following completion of the football game, when students are still on the football field, in uniform, under the stadium lights, with the audience still in attendance, and while Mr. Kennedy is still in his District-issued and District-logged attire. Critically, at that time, Mr. Kennedy *remains on duty*. All District-employed coaches and assistant coaches are responsible for supervision of students not only before and during games, but following completion of the contest and until the players have returned to the locker room, changed out of their uniforms, and been released to their parents or otherwise depart the District-sponsored activity. We believe that this expectation is clearly understood by all coaches employed by the District. After all, the District activity is *not merely an athletic contest*. The event encompasses all of the pre-game preparation and post-game activities attendant to and which are, as much as the game itself, reasons for school district athletic programs.

As such, your analogy to *Wigg v. Sioux Falls Sch. Dist.*, 382 F.3d 807 (8th Cir. 2004), is inapt. In that case, a religious club, along with many other clubs, was allowed to use school district facilities for voluntary club purposes after the school day had ended. The court ruled that a teacher for the school district could not be prohibited from participating in that club's activities on the basis of the district's interest in avoiding an Establishment Clause violation, because her participation occurred after her

work day had ended, involved an event that was not district-sponsored, and, importantly, after “nonparticipating students ... exited the building.” 382 F.3d 807, 815. Under those circumstances, the court found that no reasonable person would perceive the teacher’s participation in the club’s activities as school district endorsement of religion.

Mr. Kennedy’s situation is markedly different. His post-game talks occur immediately following the end of the game, during a District-sponsored event at which he is paid to attend and perform his job duties. During the time following completion of the game, until players are released to their parents or otherwise allowed to leave the event, Mr. Kennedy, like all coaches, is clearly on duty and paid to continue supervision of students. During such times, Mr. Kennedy must continue to comply with the guidelines that have been provided to him.

On the other hand, once Mr. Kennedy is truly no longer on duty, the analysis in *Wigg* applies, and he is free to engage in such activities as he chooses, so long as they are otherwise consistent with the District’s policies regarding private use of District facilities—which do not prohibit religious activities. For example, one recent media report states: “Nearly an hour after the game, Kennedy told KING 5 he waited until the lights were out and he was the only person left in the stadium. Then, he walked to the 50-yard-line, alone, and bowed his head in prayer.” The District has absolutely no concern with this conduct, as it appears to have occurred after Mr. Kennedy’s duties for the District had ended. Of course, this is but one example of off-duty conduct that poses no concerns to the

District; the point is that the District does not purport to control Mr. Kennedy's private conduct, including exercise of his religious rights, when he is not on duty for the District.

Moreover, the District's guidance to Mr. Kennedy does not prohibit all religious exercise *even while he is on duty as a District-paid coach*. He is free to engage in religious activity, including prayer, even while on duty, so long as doing so does not interfere with performance of his job duties, and does not constitute District endorsement of religion. However, Mr. Kennedy must be cautious to avoid the constitutional violations identified in *Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3rd Cir. 2008).

The facts of that case are remarkably similar to those present here. The *Borden* court upheld the school district's prohibition of the coach joining in or even bowing his head or kneeling during voluntary, student-initiated prayer, because he had a long-standing and well-known history of having led students in prayer: "[B]ased on the history and context of Borden's conduct in coaching the EBHS football team over the past twenty-three years, Borden is in violation of the Establishment Clause when he bows his head and takes a knee while his team prays." *Id.* at 175. "The history of Borden's prayers with the football team leads to a reasonable inference that his current requested conduct is meant 'to preserve a popular "state-sponsored religious practice" of praying with his team prior to games.'" *Id.* at 177 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000)). "We find that, based on the history of



Borden's conduct with the team's players, his acts cross the line and constitute an unconstitutional endorsement of religion.... Based on this history, we hold that a reasonable observer would conclude that Borden is showing not merely respect when he bows his head and takes a knee with his teams and is instead endorsing religion." *Id.* at 178.

Given the marked similarity of facts between the *Borden* case and Mr. Kennedy's prior, long-standing and well-known history of leading students in prayer, the District has no choice but to conclude that a federal court would rule in the same way here. That is, any overt actions on Mr. Kennedy's part, appearing to a reasonable observer to endorse even voluntary, student-initiated prayer, while he is on duty as a District-paid coach, would amount to District endorsement of religion in violation of the Establishment Clause. For these reasons, the District affirms the guidance and expectations provided to Mr. Kennedy on September 17, 2015. Given the significant potential liability to which conduct violating those guidelines would expose the District, strict adherence is required and expected, and violations cannot be tolerated.

Please let me know if you have any questions or wish to discuss these matters further.

Sincerely,

PORTER FOSTER RORICK LLP

[handwritten: signature]

Jeffrey Ganson

\* \* \*

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**Photograph of J. Kennedy in Prayer Circle  
(Oct. 16, 2015)**



JA 83

**Emails From A. Leavell to B. Keim re: Randy  
Dorn Statement (Oct. 20, 2015)**

From: Aaron Leavell  
To: Bill Keim  
Subject: Re: Randy Dorn Statement  
Date: Tuesday, October 20, 2015 4:12:41 PM

Yes it does

On Tuesday, October 20, 2015, Bill Keim <\* \* \*>  
wrote:

I see what you mean, but I think in the overall context  
it's clear he supports your actions. Sounds like it may  
be a mute issue. I assume the use of a silent prayer  
changes the equation a bit.

\* \* \*

From: Aaron Leavell [\* \* \*]  
Sent: Tuesday, October 20, 2015 4:05 PM  
To: Bill Keim <\* \* \*>  
Subject: Re: FW: Randy Dorn Statement

The first sentence in his email would not serve us well  
...it can be interpreted to say he supports staff leading  
prayer at football games! ☺ His email is a nice gesture  
of support, but the coach moved on from leading  
prayer with kids, to taking a silent prayer at the 50  
yard line, etc. Thank you for your efforts and support  
Bill, I truly appreciate it.

Aaron

On Tuesday, October 20, 2015 at 3:38 PM, Bill Keim  
<\* \* \*> wrote:

It would be helpful to see what Randy writes if you  
don't mind sharing. It probably depends on what the  
next steps are for district and coach but let me know if

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more help would be helpful. My only hesitation in writing something is that I'm not real current in this aspect of school law and if I write publically on the issue I want to be sure that I'm on solid footing.

Bill

\* \* \*

From: Nathan Olson [\* \* \*]  
Sent: Tuesday, October 20, 2015 3:16 PM  
To: 'Karen Waters' <\* \* \*>; Bill Keim <\* \* \*>  
Subject: RE: Randy Dorn Statement

Karen and Bill,

Randy decided that a low-keyed approach is the best way to handle the issue. To that end, he's sending a personal email to Superintendent Leavell. It should go out this afternoon. Below is the text. Let me know if you have any questions.

Nate

Superintendent Leavell:

I'm emailing you to provide my support regarding district staff leading prayers at football games.

My approach to complicated issues usually comes down to common sense, and that's no different in this case. I have no problem with students or staff silently praying on their own. But we have a firm and foundational policy in this country separating church and state. When a school official decides to lead a prayer, he or she puts students in an awkward position. And that official opens the district up to a lawsuit.

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I want to commend you on how you've handled the situation. I hope it can be resolved quickly and without harm either to students, staff or the district.

Sincerely,

Randy Dorn  
Superintendent of Public Instruction

From: Karen Waters [\* \* \*]  
Sent: Tuesday, October 20, 2015 11:02 AM  
To: Nathan Olson  
Subject: RE: Randy Dorn Statement

Great. Just keep me posted. Thanks.

\* \* \*

From: Nathan Olson [\* \* \*]  
Sent: Tuesday, October 20, 2015 11:01 AM  
To: Karen Waters  
Subject: RE: Randy Dorn Statement

Thanks, Karen. I'm not sure at this point what we're doing. I'm meeting with our legal counsel shortly and will provide you an update when I know more.

Nate

From: Karen Waters [\* \* \*]  
Sent: Tuesday, October 20, 2015 10:38 AM  
To: Nathan Olson  
Subject: FW: Randy Dorn Statement

Nate -

Please see below e-mail chain about the Bremerton School District issue and State Supt. Dorn's willingness to write a supportive statement.

We're helping the district out and wrote these two statements that will provide background.

JA 86

10/19: <http://www.bremertonschools.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=7471&ViewID=047E6BE3-6D87-4130-8424-D8E4E9ED6C2A&RenderLoc=0&FlexDataID=8916&PageID=1>

10/16: <http://www.bremertonschools.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=7471&ViewID=047E6BE3-6D87-4130-8424-D8E4E9ED6C2A&RenderLoc=0&FlexDataID=8704&PageID=1>

Will you let me know if you need any help. Also, what's your timing? We just got word this morning that a religious group from Tacoma plans to protest in front of the high school Friday morning.

Thoughts?

\* \* \*

From: Bill Keim [\* \* \*]

Sent: Monday, October 19, 2015 5:43 PM

To: Karen Waters

Cc: 'Aaron Leavell (\* \* \*)'; Jocelyn McCabe

Subject: RE: Randy Dorn Statement

Hi Karen,

I'm not sure that Nathan is involved at this point but I'm sure he will be. Randy mentioned that there in-house council was working on the statement at this point. I think it would be fine for you to reach out to Nate.

Bill

\* \* \*

JA 87

From: Karen Waters [\* \* \*]  
Sent: Monday, October 19, 2015 5:29 PM  
To: Bill Keim <\* \* \*>  
Cc: Aaron Leavell <\* \* \*>; Jocelyn McCabe <\* \* \*>  
Subject: Re: Randy Dorn Statement

Great. I am happy to connect with Nate Olson, if that is helpful.

\* \* \*

On Oct 19, 2015, at 5:17 PM, Bill Keim <\* \* \*> wrote:  
I'm at the Senate Listening Tour tonight in Renton. Randy Dorn is here so we had a chance to talk. He said they are working on a statement that should come out on Wed. or Thur. I don't know much more about it but at least they plan to speak to the issue.

Bill

\* \* \*

JA 88

**Email Chain Between A. Leavell and R. Dorn  
re: Your Response to Prayer Issue  
(Oct. 21, 2015)**

From: Aaron Leavell

To: Randy Dorn

Subject: Re: Your Response to Prayer Issue

Date: Wednesday, October 21, 2015 11:03:07 AM

Thank you, Randy. I appreciate you taking the time to acknowledge our situation and to reinforce our position on the matter. The issue is quickly changing as it has shifted from leading prayer with student athletes, to a coaches right to conduct a personal, private prayer.....on the 50 yard line. We are working through this together and with the assistance of our attorneys. For the sake of our students rights and the rights of our employee(s), I hope we can find a positive solution that meets the needs of our staff member(s), and legally upholds the rulings of previous Supreme Court cases to protect all students rights. Again, thank you very much. It helps to know we have your support!

Sincerely,

Aaron Leavell

On Tue, Oct 20, 2015 at 4:41 PM, Randy Dom <\* \* \*> wrote:

Superintendent Leavell:

I'm emailing you to provide my support regarding district staff leading prayers at football games.

My approach to complicated issues usually comes down to common sense, and that's no different in this case. I have no problem with students or staff



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exercising their right to silently pray on their own. But we have a firm and foundational policy in this country separating church and state. When a school official decides to lead a prayer, he or she puts students in an awkward position. That's not fair to students who don't share the official's faith. What's more, that official could open the district up to a lawsuit.

I want to commend you on how you've handled the situation. I hope it can be resolved quickly and without harm either to students, staff, or the district.

Randy I. Dorn

**Letter From A. Leavell to J. Kennedy  
(Oct. 23, 2015)**

Dear Coach Kennedy:

On September 17, 2015, I provided you with guidance and a set of standards for compliance with Bremerton School District Board Policy 2340. Those directives were in response to your prior practices involving on-the-job prayer with players in the Bremerton High School football program, both in the locker room prior to games as well as on the field immediately following games. In general, I believe that you have attempted to comply with the guidelines set forth in that letter.

However, immediately following the end of the homecoming game on October 16, 2015, you knelt at midfield and bowed your head in prayer. While most of the BHS players were at that moment engaged in the traditional singing of the school fight song to the audience, your intention to pray at midfield following the game was widely publicized, including through your own media appearances.

I wish to emphasize my appreciation for your efforts to comply with the September 17 directives. Nevertheless, I find it necessary to clarify the District's expectations going forward. As was discussed in that letter:

Many decades of federal court litigation, including decisions of the United States Supreme Court, have fleshed out the meaning of the First Amendment's Establishment Clause and Free Exercise Clause. In the public schools context, it is clear that schools and their employees may not directly prohibit

students from participating in religious activities, nor may they require students to participate in religious activities. Further, it is equally clear that school staff may not indirectly encourage students to engage in religious activity (or discourage them from doing so), *or even engage in action that is likely to be perceived as endorsing (or opposing) religion* or religious activity. In short, schools and their employees, while performing their job duties, must remain neutral—allowing non-disruptive student religious activity, while neither endorsing nor discouraging it.

Federal case law makes clear that a violation of the United States Constitution's First Amendment Establishment Clause occurs if a school employee engages in conduct which a reasonable observer, familiar with the history and context of the conduct, would perceive as government endorsement of religion. I again emphasize that the District does not prohibit prayer or other religious exercise by employees while on the job. However, as my September 17 letter stated, such exercise must not interfere with the performance of job responsibilities, and must not lead to a perception of District endorsement of religion. I conclude that your conduct of October 16, 2015, is not consistent with these requirements.

As the District has emphasized to your legal representatives, paid assistant coaches in District athletic programs are responsible for supervision of students not only prior to and during the course of

games, but also during the activities following games and until players are released to their parents or otherwise allowed to leave. Supervision of students, including in dressing rooms, is explicitly listed among the responsibilities of assistant coaches in the District. Indeed, I have confirmed with your head coach that for over ten years, all assistant coaches have had assigned duties both before and after each game and have been expected to remain with the team until the last student has left the event; that until recently, you regularly came to the locker room with the team and other coaches following the game; that you have been among the assistant coaches with specific responsibility for the supervision of players in the locker room following games; and that you have helped in the supervision of students until they are picked up by parents or leave the facility, including during post-game meetings between the head coach and coordinators. From this review, I am satisfied that you are and have been aware that as a paid assistant coach, you remain on duty following games until the last student has left the event. If that has been unclear, I trust any confusion on your part as to these expectations has now been remedied.

Thus, when you engaged in religious exercise immediately following the game on October 16, you were still on duty for the District. You were at the event, and on the field, under the game lights, in BHS-logoed attire, in front of an audience of event attendees, solely by virtue of your employment by the District. The field is not an open forum to which members of the public are invited following completion of games; but even if it were, you continued to have job responsibilities, including the supervision of players.

While I understand that your religious exercise was fleeting, it nevertheless drew you away from your work. More importantly, any reasonable observer saw a District employee, on the field only by virtue of his employment with the District, still on duty, under the bright lights of the stadium, engaged in what was clearly, given your prior public conduct, overtly religious conduct. And there were many such observers: The game had ended mere moments earlier. Under federal court precedent, a court would almost certainly find your conduct on October 16, in the course of your District employment, to constitute District endorsement of religion in violation of the United States Constitution. That same case law not only allows, but requires, the District to prohibit such violations from recurring. In addition, Washington courts have held that Article IX Section 4 of the Washington Constitution, which provides that public schools “shall be forever free from sectarian control or influence,” imposes an even more strict prohibition on public agency endorsement of religion.

I wish to again emphasize that the District does not prohibit prayer or other religious exercise by its employees. However, it must prohibit any conduct by employees that would serve as District endorsement of religion. I have explained above why your conduct of October 16 violates that expectation. On the other hand, I wish to make it clear that religious exercise that would not be perceived as District endorsement, and which does not otherwise interfere with the performance of job duties, can and will be accommodated. Development of accommodations is an interactive process, and should you wish to continue to engage in private exercise while on the job, the

District will be happy to discuss options for that to occur in a manner that will not violate the law.

It is common for schools to provide an employee whose faith requires a particular form of exercise with a private location to engage in such exercise during the work day, not observable to students or the public, so long as this does not interfere with performance of job responsibilities. For example, a private location within the school building, athletic facility or press box could be made available to you for brief religious exercise before and after games, if this will not interfere with your assigned duties. Please let me know if you would like to discuss such accommodations.

Finally, I would like to remind you of what I said in my September 17 letter: That is, the District values very highly your positive contributions to the BHS football program, and in particular, your motivational and inspirational talks to the players. In that letter, I assured you that you could continue that practice, focusing on appropriate themes such as unity, teamwork, responsibility, safety and endeavor. After the game immediately following that letter, you provided such a talk to the players of both teams, while remaining entirely secular. That talk was well received, and appreciated by the District and the community. I would certainly encourage continuation of that practice.

To summarize: While on duty for the District as an assistant coach, you may not engage in demonstrative religious activity, readily observable to (if not intended to be observed by) students and the attending public. You may not repeat your conduct of

JA 95

October 16, 2015, for the reasons discussed above. Given the severity and likelihood of liability faced by the District in the event of further violations of these directives, any further violations will be grounds for discipline, up to and including discharge from District employment. It is my hope that you will choose to honor these expectations, and continue your positive work with the BHS football program for the remainder of this season.

Sincerely,

[handwritten: signature]

Aaron Leavell, Ed.D.  
Superintendent

JA 96

**Email from A. Leavell to BSD Board Members  
re: Coach situation (Oct. 26, 2015)**

\* \* \*

Your emails may be active today as Liberty Institute posted our letter of direction from Friday to their website over the weekend. Coach is still employed as we issued a further letter of direction, not a discipline letter. His actions Friday, yet again, moved closer to what we want, but are still unconstitutional. We are hoping to communicate with his attorney's soon this week to discuss. Thank you, and feel free to contact me by phone for any questions you have.

Sincerely,

Aaron

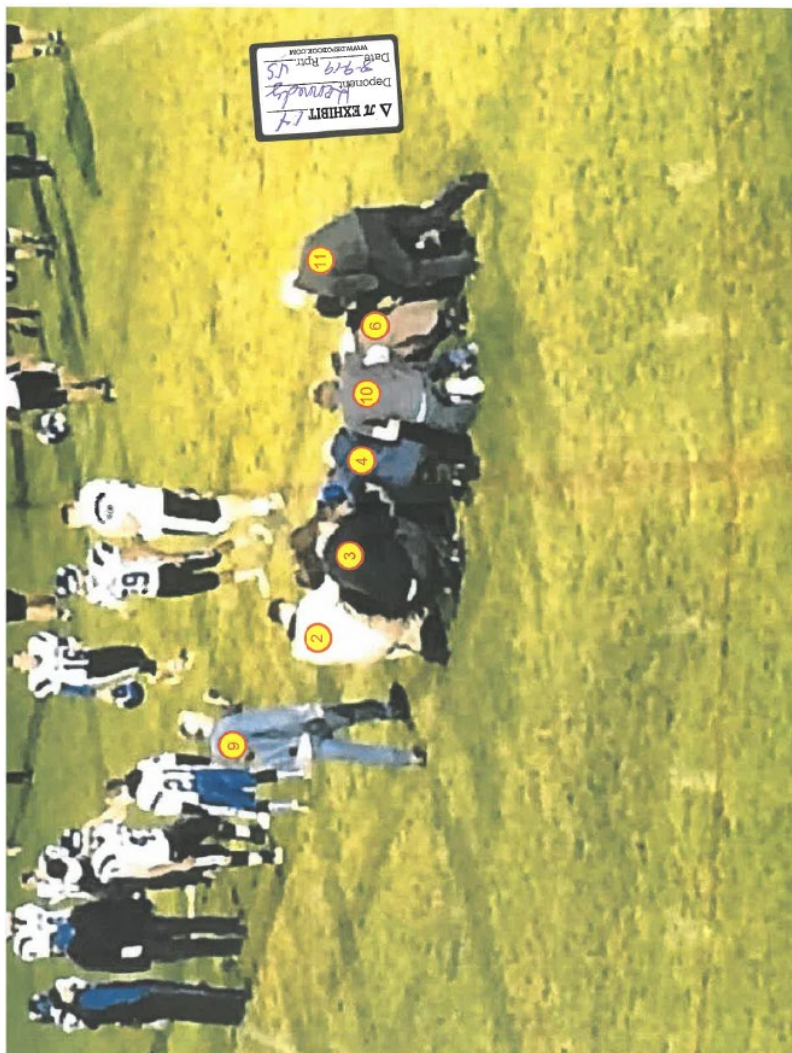
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Aaron Leavell Ed.D.  
Superintendent  
Bremerton School District



JA 97

**Photograph of J. Kennedy in Prayer Circle  
(Oct. 26, 2015)**



JA 98

**Photograph of J. Kennedy Standing in Group of  
Kneeling Players**



JA 99

**Photograph of Self-Described “Satanists”  
Outside of Bremerton High School  
Football Game**



**Email Chain Between A. Leavell and D. Rubie  
re: Update (Oct. 27, 2015)**

From: Aaron Leavell

To: Dave Rubie

Subject: Re: Update

\* \* \*

Yes that works

On Monday, October 26, 2015, Dave Rubie \* \* \* wrote:

Got it. I will try to contact you Tuesday about noon.  
Okay?

Dave

\* \* \*

On Oct 26, 2015, at 7:49 PM, Aaron Leavell \* \* \* wrote:

Good evening board members:

I just thought I would check in on a couple items from today's media events. First of all, we have not officially heard from Joe's attorney's that they are filing a lawsuit, in response to our latest letter of direction last Friday. If and when I do receive notice, I will let you know. At present time, Joe is still free to coach. We feel he moved in yet a better direction with his actions Friday night at North Mason, but still out of compliance. We made suggestions for accommodations or to the offer to discuss, and they say we are declining his accommodation—because for him it is on the 50 yard line. We will hopefully talk with his representatives this week sometime. There is a JV tonight and a Varsity game this Thursday night, both at home. Secondly, the Satanist group from Seattle has vowed to come to the field to pray Thursday after the game, since they view our strategy with the coach

JA 101

as inaction, and want the same access to the field to pray that Joe does. We do not allow folks access to the field post-games, and have purchased signs to put up stating so, and will make several announcements during the game saying so. However, we have not been able to stop the hundreds of folks who have rushed the fields in the two home games where folks came out to support Joe. This issue of equity, is exactly the door we were worried about opening to all groups with Joe establishing his ritual of prayer after games. If you have any questions, or comments, please feel free to call me on my cell. Otherwise, I will keep you updated as things change (or not). If you can, please let me know you received this update. Thanks!

Sincerely,

Aaron

\* \* \*

**Letter From A. Leavell to J. Kennedy  
(Oct. 28, 2015)**

Dear Coach Kennedy,

On September 17, 2015, you were provided with written direction regarding religious activity while on duty. You told me that you understood and would follow those guidelines. However, immediately following completion of the Bremerton High School varsity football game on October 16, 2015, you violated those directives by engaging in overt, public and demonstrative religious conduct while still on duty as an assistant coach.

Rather than taking any action with respect to your employment status in response to that conduct, I provided you with additional direction by letter on October 23, 2015. In that letter, I offered several possible means of accommodating your desire to engage in private prayer following football games—offering private locations for you to pray in the school building, athletic facility or stadium press box—so long as your brief, private religious exercise would not interfere with your performance of your continuing duties as an assistant coach. Observing that the development of accommodations is an interactive process, I also invited you to contact me to discuss these or other options for accommodating your free exercise rights.

Rather than contact me, or use any of the offered accommodations, on October 23, 2015, while still on duty, you kneeled on the field and prayed immediately following the varsity football game. Further, on October 26, 2015, while still on duty as the head coach of the junior varsity team, you kneeled on the field and

prayed immediately following that game, while your players were still engaging in post-game traditions. You then rejoined your players for a post-game talk. Your conduct on both occasions was in direct violation of the directives set forth in my October 23 letter.

Effective immediately, pending further District review of your conduct, you are placed on paid administrative leave from your position as an assistant coach with the Bremerton High School football program. This leave will remain in effect until you are notified that it has been lifted. Unless and until you are advised otherwise, you may not participate, in any capacity, in BHS football program activities. You may be present for public football program events or other public District activities, and may be present at District facilities, only when, where and under the same conditions that other members of the general public are allowed to be present. On such occasions, your presence is conditioned upon full compliance with all District policies and procedures. Please contact John Polm to arrange for the immediate return of any District property in your possession.

I regret the necessity of this action. Please know that the District remains willing to discuss ways of accommodating your private religious exercise. Please contact me if you wish to discuss the options I have previously identified, or any other options you may have in mind.

Sincerely,

[handwritten: signature]

Aaron Leavell, Ed.D.

Superintendent

**Bremerton School District Statement and Q&A  
Re: Assistant Football Coach J. Kennedy  
(Oct. 28, 2015)**

This afternoon, the Bremerton School District informed Bremerton High School assistant football coach Joe Kennedy that he has been placed on paid administrative leave. This action was necessitated by Kennedy's refusal to comply with the District's lawful and constitutionally-required directives that he refrain from engaging in overt, public religious displays on the football field while on duty as a coach. While the District appreciates Kennedy's many positive contributions to the BHS football program, and therefore regrets the necessity of this action, Kennedy's conduct poses a genuine risk that the District will be liable for violating the federal and state constitutional rights of students or others. For this reason, Kennedy will not be allowed to further violate the District's directives.

**Has Kennedy been fired?**

No. He remains employed by the District, and will be paid as such throughout the remainder of his contract term, unless his employment status is changed in the future. However, unless and until he affirms his intention to comply with the District's directives, he will not participate, in any capacity, in BHS football program activities.

Of course, like any other member of the community, Kennedy may attend District events that are open to the public on the same terms as any other community member.



**Why can't Kennedy lead students in voluntary prayer? Nobody is forced to participate, are they?**

There is indeed no evidence that students have been directly coerced to pray with Kennedy. But that isn't the standard. Over fifteen years ago, the United States Supreme Court said as much. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the Court held that a school district's practice of simply allowing its facilities to be used for religious expression during a district-sponsored football game violated the First Amendment's Establishment Clause because of the reasonable perception by students and attendees of district endorsement of religion. That decision makes clear that students can pray on their own; but it is a constitutional violation of students' rights for a District employee, acting as such, to initiate prayers with students. It is equally clear that District employees may not participate in even student-initiated prayer. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (1995). While attending games may be voluntary for most students, students required to be present by virtue of their participation in football or cheerleading will necessarily suffer a degree of coercion to participate in religious activity when their coaches lead or endorse it.

Notably, we believe Mr. Kennedy understands this. On September 17, 2015, the District notified him that he was prohibited from repeating his prior practices of leading players in a pre-game prayer in the locker room or leading players in a post-game prayer immediately following games. To the District's knowledge, Mr. Kennedy has complied with those

directives not to intentionally involve students in his on-duty religious activities. However, he has continued a practice of engaging in a public religious display immediately following games, while he is still on duty.

**Why has the District prohibited Mr. Kennedy from praying on his own?**

It hasn't. The District respects Mr. Kennedy's own constitutional right to free exercise of religion, and understands that it has a duty to reasonably accommodate that exercise under Title VII of the Civil Rights Act. To that end, the District has repeatedly offered to accommodate Kennedy's religious exercise by providing him with a private location to use for prayer that does not interfere with his performance of his duties. Examples are private locations within the school building or athletic facility, or even in the Memorial Stadium press box. The District has also encouraged Kennedy to offer his own suggestions for ways in which his desire to engage in private prayer can be accommodated without subjecting the District to liability for violating the Establishment Clause.

To date, Mr. Kennedy has not taken the District up on any of these offers. Instead, his legal representatives have clearly stated in the media that an accommodation that does not allow Kennedy the spotlight of the 50-yard line immediately following games will be unacceptable to him.

**Why does Kennedy have to hide in order to pray?**

He doesn't have to "hide." However, the District cannot allow an employee, while still on duty, to engage in religious conduct or display that a

reasonable observer, aware of the context, would perceive as District endorsement of religion. This “endorsement” standard was identified by the Supreme Court in *Santa Fe*, and the federal courts have expanded upon it in the fifteen years since that decision. For example, in 2008, a federal appeals court held that a football coach known to have previously led students in prayer must not be allowed even to kneel or bow his head while students prayed, as this would constitute District endorsement of religion in violation of the Constitution. *Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153. And in 2006, the Ninth Circuit Court of Appeals held that a public employer’s interests in avoiding such Establishment Clause violations “outweigh the resulting limitations on [an employee’s] free exercise of his religion at work.” *Berry v. Dep’t of Social Services*, 447 F.3d 642.

If the District allowed Kennedy to engage in a public religious display in the midst of the performance of his duties, the result would be the same as in East Brunswick: The District would be subject to liability for violating the rights of its students if it allows this practice to continue. The District cannot put scarce funds needed for the District’s basic educational mandate (which our State Supreme Court has already determined to be constitutionally inadequate) at such risk. Therefore, Kennedy’s free exercise rights must be exercised only in a way that will not result in such a violation. The accommodations offered by the District are reasonable and would allow such exercise by Mr. Kennedy, while avoiding violating the rights of others.

**Isn't Kennedy off duty after the game ends, and free to do what he wants?**

No. All paid coaches in District athletic programs are required to remain with the program, performing duties as assigned, following athletic contests. These events clearly do not end upon the blowing of the final whistle. At that point, players engage in post-game traditions, such as the singing of the BHS fight song and exchanging congratulatory and uplifting words with the opposing team's players. They then return to the locker room to change out of their uniforms, and are then released to their parents or are authorized to leave. During that time, those students remain in the care of the District, and the District's employees have a legal obligation to maintain supervision of the players until they have left the event. We believe that all of the District's coaches understand this, and that players' parents reasonably expect it.

**What about a moment of silence?**

The District has given preliminary consideration to the option of calling for a moment of silence at the end of football games. However, the U.S. Supreme Court ruled in 1985 that a moment of silence adopted for the purpose of facilitating prayer constitutes state endorsement of religion in violation of the Establishment Clause. *Wallace v. Jaffree*, 472 U.S. 38. The various federal appeals courts have subsequently issued varying, possibly contradictory, decisions on this topic. At best, the constitutionality of a District-endorsed moment of silence is debatable—particularly if the practice is adopted for the specific purpose of facilitating an employee's desire to engage in a public religious display while on duty. While the District may

continue to explore this option, it is not presently satisfied that it would survive a constitutional challenge.

**Hasn't the Supreme Court allowed prayers at public meetings? How is this different?**

Yes. In 2014, the U.S. Supreme Court held in *Town of Greece v. Galloway*, 134 S.Ct. 1811, that it was not a violation of the Establishment Clause for a town council to begin its meetings with a brief prayer. Those prayers were provided by a variety of individuals of various faiths. The Court held that this tradition was authorized in the narrow circumstance of opening legislative sessions, where it was “meant to lend gravity to the occasion and reflect values long part of the Nation’s heritage,” and to “invite lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing.” The Court noted that the practice dates to the framing of the Constitution itself. The *Greece* case does not invalidate the Court’s prior, more restrictive application of the Establishment Clause in the context of public schools, where the audience consists of large numbers of students, rather than mostly adults.

**Why has this come up now, when Kennedy has been praying on the field for years?**

The District’s recent directives were not the result of formal complaints about Kennedy’s prayers in the locker room and on the field. These activities simply were not known to District administrators until an employee of another district mentioned the post-game prayers to a District administrator. That administrator recognized the clear legal issues

presented by these activities, and this prompted the District's inquiry and subsequent directives.

**If nobody complained, why not leave Kennedy alone?**

This was not an option. The prayer sessions with students clearly violated the Establishment Clause. The District cannot allow students' rights to be violated simply because none of them complain. Embedded in the federal court precedent discussed above is the reasonable expectation that students will feel coerced to go along with religious activity that is led or endorsed by their teachers and coaches. It is very likely that over the years, players have joined in these activities because to do otherwise would mean potentially alienating themselves from their team, and possibly their coaches. The District has a fundamental obligation to protect the rights of all of its students.

**Is the District allowing other groups to use the football field for religious activities?**

No. While District facilities can be used by private groups for religious activities, the District cannot allow this to occur while those same facilities are being used for District functions. During and after football games—and until the attendees leave these events—the field and stadium are exclusively in use by the District, for the District-sponsored events. The football field is not a public forum when it is in use for a District-sponsored athletic event. Thus, no group will be approved to use it for their own purposes while these events are occurring, and the District will take steps to enforce the closure of the field to non-

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participants while it is still in use for the District event.

**Bremerton School District Coaching  
Evaluation Form With Handwritten Note  
(Dec. 16, 2015)**

Name of Coach: Joe Kennedy

Building: BHS

Assignment: Assistant Football Coach

Date: November 20, 2015

**S NI Satisfactory Needs Improvement**

**PROFESSIONAL RELATIONSHIPS:**

- X • Cooperates with administration, faculty, and other staff.
- X • Establishes and maintains positive relations with parents and community.
- X • Follows school, district, league and WIAA policies.
- X • Has valid First Aid and CPR card.

**RELATIONSHIPS WITH COACHING**

**ASSOCIATES:**

- X • Maintains positive working relationships with district coaches of the same sport.
- X • Supports and cooperates with other sports and activity programs.
- N/A • **Head Coach** - Plans, organizes, and delegates responsibility well.
- N/A • Supports assistant coaches.
- X • **Assistant Coach** - Actively involved, works with other coaches.
- X • Supports head coaches.



**COACHING TECHNIQUES:**

- X • Uses sound and accepted teaching techniques and conducts organized practice sessions.
- X • Participates in off-season conditioning and weight training program for athletes.
- X • Teaches fundamentals.
- X • Teaches specific safety procedures for activity.

**RELATED RESPONSIBILITIES:**

- N/A • Complies with inventory, equipment care, and storage responsibilities.
- X • Has thorough knowledge of assigned position.
- Upgrades knowledge by participating in at least one professional clinic per year
- N/A • Hands in proper verification for WIAA Coaches Standards reports.
- N/A • **Head Coach** - files year-end activity report as required.
- N/A • Complies with budget and orders equipment in a timely manner.
- Knows and enforces current district guidelines for transportation of students to school sponsored events.
- N/A Inform assistant coaches of their responsibilities for team transportation.

- N/A • Applies discipline in a fair, positive manner as outlined in the Student Athletic Handbook, and files discipline reports with the Athletic Director.
- N/A • Cooperates with media and responds to reasonable requests.
- N/A • Holds meetings when appropriate with parents and athletes prior to first contest to establish positive communication,

**SAFETY MEASURES:**

- X • Adheres to efficient and sound program of injury prevention.
- X • When injuries do occur follows prescribed routine and maintains good communications with injured participant.

**GENERAL COMMENTS:**

Mr. Kennedy failed to follow district policy and his actions demonstrated a lack of cooperation with administration. The subsequent situations contributed to negative relations between parents, students, community members, coaches and the school district.

Mr. Kennedy failed to supervise student-athletes after games due to his interactions with media and community. Prior to his public defiance of district directions, Mr. Kennedy had assisted in student supervision. However, most of the season he did not supervise student-athletes after games.

**RECOMMENDATIONS:**

Do Not Rehire....

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[handwritten: never came in after numerous requests  
and contacts JB 12/16/15]

\_\_\_\_\_  
Signature of Coach

\_\_\_\_\_  
Date

(Coach's signature does not indicate agreement with  
the above evaluation, only recognition that it has  
been read and discussed).

[handwritten: signature]    [handwritten: 12/16/15]

Signature of Athletic Director    Date

**J. Kennedy Equal Employment Opportunity  
Commission Intake Questionnaire (Dec. 2015)**

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission (“EEOC”). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. **Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating “not known.” If a question is not applicable, write “n/a.” Please Print.**

**1. Personal Information**

Last Name: Kennedy	First Name: Joseph	MI: A
Street or Mailing Address: 7660 SE Southworth Drive	Apt or Unit #:	
City: Port Orchard	County: Kitsap	State: WA
ZIP: 98366	Phone Numbers (Work): (360) 979-0606 (Cell): (360) 440-6299	
Email Address: kennedyja@yahoo.com	Date of Birth: 05/07/1969	Sex: <input checked="" type="checkbox"/> Male

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Do You Have a Disability? No

**Please answer each of the next three questions.**

- 
- |  |   |  |
|--|---|--|
| i. Are you Hispanic or Latino?<br><input checked="" type="checkbox"/> No | ii. What is your Race? Please choose all that apply.<br><input checked="" type="checkbox"/> White | iii. What is your National Origin (country of origin or ancestry)? USA |
|--|---|--|

**Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:**

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Name: Michael Berry	Relationship: Attorney	Address: 2001 W. Plano Pkwy, Ste 1600
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City: Plano	State: TX	ZIP: 75075
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Home Phone: (214) 695-4130	Other Phone: (972) 941-4445
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**2. I believe that I was discriminated against by the following organization(s):**

- 
- Employer  Union  Employment Agency  
 Other (Please Specify)

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**Organization Contact Information** (If the organization is an employer, provide the address where you actually worked. If you work from home, check here  and provide the address of the office to which you reported.) **If more than one employer is involved, attach additional sheets.**

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Organization Name: Bremerton School District	Address: 134 Marion Ave. N.	County: Kitsap
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City: Bremerton	State: WA	ZIP: 98312
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Phone: (360) 473-1000	Type of Business: School District	Job Location if different from Org. Address: 1500 13th St., Bremerton, WA 98337
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Human Resources Director or Owner Name: Superintendent Aaron Leavell	Phone: (360) 473-1006	Number of Employees in the Organization at All Locations: Please Check One <input type="checkbox"/> Fewer Than 15 <input type="checkbox"/> 15-100 <input type="checkbox"/> 101-200 <input type="checkbox"/> 201-500 <input checked="" type="checkbox"/> More than 500
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**3. Your Employment Data (Complete as many items as you can)**

**Are you a federal employee?**

Yes  No, please see additional pages.

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Date Hired: 08/01/2008	Job Title At Hire: Assistant Coach	Pay Rate When Hired: Stipend Step 1 (0-2 Years)
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Last or Current Pay Rate: Stipend Step 3 (6-9 Years)	Job Title at Time of Alleged Discrimination: JV Head Coach/Assistant Coach	Date Quit/Discharged: _____
Name and Title of Immediate Supervisor: Nate Gillam, Head Coach		
If Job Applicant, Date You Applied for Job	Job Title Applied For _____	

**4. What is he reason (basis) for your claim of employment discrimination?**

*FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.*

<input type="checkbox"/> Race	<input type="checkbox"/> Sex	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> National Origin
<input checked="" type="checkbox"/> Religion	<input type="checkbox"/> Pregnancy	<input type="checkbox"/> Color (typically a difference in skin shade within the same race)		

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Genetic Information; choose which type(s) of genetic information involved:

- i. genetic testing
- ii. family medical history
- iii. genetic services (genetic services means counseling, education or testing)

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If you checked color, religion or national origin, please specify: Christian

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If you checked genetic information, how did the employer obtain the genetic information?

---

Other reason (basis) for discrimination (Explain).

---

**5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you.**

**Please attach additional pages if needed.**

*(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)*

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A) Date:	Action: Please
Ongoing	see additional pages

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Name and Title of Person(s) Responsible:  
Aaron Leavell, Superintendent,  
Bremerton School District

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B) Date:                      Action:

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Name and Title of Person(s) Responsible:

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**6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.**

Please see additional pages.

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

Please see additional pages.

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

**Of the persons in the same or similar situation as you, who was treated better than you?**

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A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

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B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

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**Of the persons in the same or similar situation as you, who was treated *worse* than you?**

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

**Of the persons in the same or similar situation as you, who was treated the *same* as you?**

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title
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Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title
--------------	---	-----------

Description of Treatment

**Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.**

\* \* \*

**13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)**

A. Full Name	Job Title	Address & Phone Number
What do you believe this person will tell us?		
B. Full Name	Job Title	Address & Phone Number
What do you believe this person will tell us?		

**14. Have you filed a charge previously in this matter with EEOC or another agency?**

Yes  No

**15. If you have filed a complaint with another agency, provide name of agency date and date of filing:**

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**16. Have you sought help about this situation from a union, an attorney, or any other source?**

Yes  No

Provide name of organization, name of person you spoke with and date of contact. Results, if any?

I am represented by attorneys from Gibson, Dunn & Crutcher LLP, Oldfield & Heldson LLP, Mr. A.J. Ferate, and Liberty Institute.

**Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire.** If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. **If you do not file a charge of discrimination within the time limits,**

**you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.**

Box 1

I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. **I also understand that I could lose my rights if I do not file a charge in time.**

Box 2

I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that **the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name.** I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.

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Signature

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Today's Date

**Addendum to EEOC Intake Questionnaire  
Joseph A. Kennedy**

**3. Are you a Federal Employee?**

Since 2006, I have been employed by the United States Navy at the Puget Sound Naval Shipyard & Intermediate Maintenance Facility. However, this charge of discrimination relates solely to my employment with the Bremerton School District.

**5. What happened to you that you believe is discriminatory?**

Since 2008, I have been employed as a football coach by the Bremerton School District (BSD) in Bremerton, Washington. I am an assistant coach for the Bremerton High School (BHS) varsity football team and the head coach for the BHS junior varsity football team. I am compelled by my sincerely held religious beliefs to pray at the conclusion of the football games I coach.

Since my first game as a BHS coach in 2008, I have engaged in private religious expression at the conclusion of BHS football games. Specifically, after the game is over, and after the players and coaches from both teams have met to shake hands at midfield, I linger at the 50-yard line to engage in private religious expression. I usually kneel, bow my head, and offer a brief, quiet prayer of thanksgiving for player safety and sportsmanship that lasts approximately 15-30 seconds. Some of my fellow BHS coaches frequently engage in religious expression near the 50-yard line too.

BSD has openly acknowledged that no students have ever been directed or coerced to participate in my

private religious expression. Exhibit A at 1. Initially, in 2008, I prayed silently and alone. After several games where I prayed alone, some of the players began to engage in their own religious expression near where I pray. I did nothing to encourage or discourage such student religious expression. When some players asked me if they were permitted to pray, I told them that “this is a free country, you can do what you want.” In time, the number of players who prayed near me grew to include a majority of the team. Sometimes BHS players invited players from the opposing team to join them as they engaged in student religious expression after the game. At some point during the 2009 season, I started giving a short motivational speech prior to some of my post-game prayers. Around the same time, some of my prayers began to be audible. At all times, as BSD concedes, I did not encourage or discourage student religious expression. Exhibit A at 1. BSD has acknowledged that it has never received a complaint about my private religious expression. Exhibit F at 3.

On September 17, 2015, BSD sent me a letter prescribing specific guidelines for my private religious expression. BSD informed me that I was permitted to engage in “religious activity, including prayer, so long as it does not interfere with job responsibilities.” Exhibit A at 3. BSD also stated that my religious expression should not be “outwardly discernible as religious activity” if students are engaged in religious conduct. *Id.*

After I received BSD’s September 17 letter, I temporarily stopped praying immediately after BHS football games until I could obtain legal counsel to

advise me of my legal rights and obligations. I did not pray again until after the October 16, 2015 football game. Pursuant to my attorneys' advice, I intended to pray privately and quietly after BHS football games, and at a time during which my private religious expression would not interfere with my coaching duties.

I also requested a religious accommodation that would permit me to briefly and quietly engage in private religious expression, in a manner and at a time that is reasonably unlikely to interfere with my coaching duties. In essence, I requested an accommodation that would permit me to engage in brief, private religious expression following BHS football games. On October 23, 2015, just hours before the football game scheduled for that night, BSD sent me a second letter denying my request for a religious accommodation and issuing a new directive that BSD employees may not engage in visible religious expression while on duty. Exhibit D.

On October 28, 2015, in response to my private religious expression on October 23, BSD took adverse employment action against me by placing me on paid administrative leave and prohibiting me from any participation in BHS football program activities. Exhibit E. BSD's stated reason for this adverse action is that I violated its October 23 directive by "engaging in overt, public and demonstrative religious conduct while still on duty as an assistant football coach." *Id.* at 1.

Also on October 28, 2015, BSD released a public document entitled "Bremerton School District Q&A Regarding Assistant Football Coach Joe Kennedy."

Exhibit F. In this document, BSD set forth its rationale for taking adverse employment action against me. Notably, BSD once again stated that it cannot permit its employees to engage in visible religious expression while on duty. BSD admitted, however, that I had complied with its directives not to intentionally involve students in my private religious expression.

Prior to these events, I had received uniformly excellent performance evaluations from my superiors at BSD, including the school's athletic director. Exhibit G. Each of my prior performance evaluations recommended that I be re-hired for the following year. In November 2015, however, I received a performance evaluation recommending that I not be re-hired based on my alleged failure to follow district policy and alleged failure to supervise students after games. Exhibit H at 2. I believe the context makes clear that this recommendation was made because of my private religious expression at the conclusion of football games.

**6. Why do you believe these actions were discriminatory?**

BSD violated my rights to free exercise of religion and free speech by prohibiting my private religious expression and taking adverse employment action against me on the basis of my religion, notwithstanding my request for a reasonable accommodation that would allow me to practice my sincerely held religious beliefs. Moreover, BSD does not uniformly or consistently enforce its discriminatory policy. I have observed other BSD employees engage in visible religious expression



without adverse consequences. For example, Assistant Coach David Boynton regularly engages in a Buddhist chant near the 50-yard line at the conclusion of BHS football games. Finally, BSD retaliated against me for engaging in private religious expression.

**7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?**

Aaron Leavell, Superintendent of the Bremerton School District, informed me that district policy prohibited me from engaging in private religious expression compelled by my sincerely held religious beliefs. I was subsequently subject to an adverse employment action, instituted by Mr. Leavell, because I engaged in “overt, public, and demonstrative religious conduct while on duty” as an employee.

**8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.**

**Of the persons in the same or similar situation as you, who was treated better than you?**

<u>A. Full Name</u> David Boynton	<u>Race, sex, age, national origin, religion or disability</u> Buddhist	<u>Job Title</u> Assistant Head Coach
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Description of Treatment  
Mr. Boynton also engaged in overt, public, and demonstrative religious conduct while on duty as an employee, yet no action was ever taken against him.

**13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response.)**

<u>A. Full Name</u> Brandon Pederson	<u>Job Title</u> Assistant Coach	<u>Address &amp; Phone Number</u> 17373 Viking Way Poulsbo, WA 98370 (360) 979-0894
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What do you believe this person will tell us?  
Mr. Pederson will confirm I have been discriminated against by the school district.  
I coach with Mr. Pederson.

<u>A. Full Name</u> Luke Fletcher	<u>Job Title</u> Assistant Coach	<u>Address &amp; Phone Number</u> 2700 Perry Ave. Bremerton, WA 98310 (360) 674-8051
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What do you believe this person will tell us?

Mr. Fletcher will confirm I have been discriminated against by the school district.

I coach with Mr. Fletcher.

**Letter from J. Ganson to EEOC re: J. Kennedy  
EEOC Charge No. 551-2016-00462 (Apr. 6, 2016)**

Hattic Y. Reed, Office Automation Assistant

U.S. Equal Opportunity Commission

\* \* \*

Dear Ms. Reed:

On behalf of the Bremerton School District, this letter and the attached documents constitute the District's response to your office's March 7, 2016 request for information. For the reasons described below, the District denies that it has discriminated against the Complainant on the basis of religion.

**Background**

The Bremerton School District is a municipal corporation. The District is responsible for 5,200 students across four elementary schools, one early learning center (preschool through third grade), one STEM academy (preschool through eighth grade), one middle school, one high school, one alternative high school, a technical skills center, and a kindergarten through eighth grade home school partnership program. The District's superintendent is Aaron Leavell, Ed.D. An organizational chart is attached as Exhibit A.

The District employed Mr. Kennedy (Complainant) as a football coach from 2008 until the 2015-2016 school year. He worked as an assistant coach for the varsity high school team and a head coach for the junior varsity high school team. Job descriptions for both positions are attached as Exhibits B and C.

Coaches in the District are represented by the Bremerton Coaches and Activities Association. Coaches are employed under one-year contracts with the District and are evaluated once a year. See Exhibit D at 3. Coaches sign an agreement acknowledging that they have read all District policies and procedures. Exhibit E (Kennedy 2015 agreement).

Football games are organized District events. The facilities—stadium, field and locker room—are under the District’s exclusive control during these events. Both head coaches and assistant coaches are responsible for supervising students before, during, and after games until students are released to parents or otherwise allowed to leave. See Exhibit B (assistant coach job description stating duties include “assist[ing] head coach with his/her supervisory responsibilities;” “accompany[ing] and direct[ing] all games at home or out of town;” and supervising dressing rooms). For the past ten years, assistant coaches have been expected to remain with the team following completion of the game. This includes supervising student activities immediately following the completion of the game (when at home games players have a tradition of going to the sideline to sing the school’s fight song to those in the stands), along with accompanying and supervising students as they return to the locker room, engage in post-game discussions with coaches, change into their street clothes and are ultimately released from the activity. During his employment with the District, Complainant regularly came to the locker room following football games, was responsible for supervising players in the locker room, and regularly

helped supervise students until they were picked up by parents or otherwise left school grounds.

**Allegations of Discrimination**

Complainant contends the District discriminated against him based on his religion by denying his request for accommodation and treating him less favorably than similarly situated employees. The District denies all allegations of discrimination. The District's directives regarding Complainant's on-duty prayer were based on firmly-established First Amendment jurisprudence. Further, the District repeatedly attempted to accommodate Complainant's religious exercise in a manner consistent with the Establishment Clause.

In the beginning of the 2015-2016 school year, the District became aware that Complainant had invited another school's football team to join him and the team in a post-game prayer. The District, having previously been unaware of such activities, conducted an inquiry into whether its staff appropriately complied with Board Policy 2340, titled "Religious-Related Activities and Practices." That Policy is attached as Exhibit F.

The District's inquiry revealed that Complainant had been leading the students and coaching staff in pre-game prayers in the locker room and had been giving inspirational speeches at midfield following football games, including overtly religious references constituting prayer. On September 17, 2015, Superintendent Leavell wrote Complainant a letter regarding these "problematic practices within the football program." That letter is attached as Exhibit G. Superintendent Leavell's letter explained that "both activities would very likely be found to violate

the First Amendment's Establishment Clause, exposing the District to significant liability." Exhibit G at 1.

In his September 17 letter, Superintendent Leavell directed Complainant to adhere to Policy 2340, directing him to omit religious expression from his motivational talks with students and provided specific guidance on the conduct expected of District employees to avoid any perception of endorsement of religion. The letter states that students may initiate religious expression, but that such expression cannot be suggested, encouraged, discouraged, or supervised by District staff. Further, the District specifically informed Complainant that he was free to engage in religious activity, including prayer, "so long as it does not interfere with job responsibilities. Such activity must be physically separate from any student activity, and students may not be allowed to join such activity." Exhibit G at 3.

On October 14, 2015, the District received a letter from an attorney, Hiram Sasser of the Liberty Institute, written on behalf of Complainant. Exhibit H. That letter requested the District accommodate Complainant's practice of post-game prayer, disputed that the directives in the District's September 17 letter were necessary or lawful, and stated that Complainant would continue his practice of praying at the 50-yard line immediately following the October 16, 2015 homecoming football game at Bremerton High School.

On October 16, following that game, Complainant knelt at midfield and bowed his head in prayer. By letter dated October 23, 2015, Superintendent Leavell

informed Complainant that his actions were inconsistent with the requirements laid out in the September 17 letter, and likely constituted an endorsement of religion in violation of the U.S. Constitution. Exhibit I. Recognizing the District's obligations under Title VII of the Civil Rights Act, Dr. Leavell reiterated that the District would accommodate employee religious exercise so long as that exercise did not constitute endorsement or interfere with Complainant's performance of his job duties. Dr. Leavell noted that developing accommodations is an interactive process and invited Complainant to discuss options with the District, including providing Complainant with a private place for religious observance, not observable to students or the public, before and after games. Specific options offered by Dr. Leavell included allowing Complainant to return to the locker room or school building, or allowing Complainant's use of an unused press box at the high school's stadium. Exhibit I at 3. Instead of proposing alternative accommodations meeting the District's need to avoid an Establishment Clause violation, the Complainant's legal representatives stated in the media that the options offered by the District were no accommodations at all. Exhibit J. These comments made clear that anything short of an opportunity to engage in on-duty demonstrative prayer activity in the middle of the field, while still in school-logoed coaching attire, under the stadium lights, while students, staff and parents were still present and engaged in the organized post-game activities, would be unacceptable to Complainant and his legal team. It seems clear that the public spectacle of his conduct was central to Complainant's position.



Following his receipt of the October 23 letter, Complainant assistant coached a District varsity football game. While on duty following that game, Complainant kneeled on the field and prayed. Three days later, on October 26, 2015, Complainant acted as head coach for the junior varsity football game. Before Complainant's post-game talk, and while players were present and engaging in post-game traditions, Complainant kneeled on the field and prayed. At these times, the audience attending both games remained present in the stands, observing the traditional postgame activities.

In response to Complainant's conduct, Dr. Leavell placed Complainant on paid administrative leave. By letter dated October 28, 2015, Dr. Leavell stated that Complainant's conduct on October 23 and October 26 was "in direct violation of the directives set forth in my October 23 letter." That letter is attached as Exhibit K. Dr. Leavell again informed Complainant that the District remained willing to accommodate his private religious exercise, and urged Complainant to contact him to discuss options for doing so.

In November 2015, following completion of the football season, District Athletic Director Jeff Barton completed the 2015-2016 Coaching Evaluation Form for Complainant. Exhibit L. The evaluation recommended that Complainant not be rehired, and provided the following explanation:

Mr. Kennedy failed to follow district policy and his actions demonstrated a lack of cooperation with administration. The subsequent situations contributed to negative relations between parents, students,

community members, coaches, and the school district. Mr. Kennedy failed to supervise student-athletes after games due to his interactions with media and community. Prior to his public defiance of district directions, Mr. Kennedy had assisted in student supervision. However, most of the season he did not supervise student-athletes after games.

Under the bargaining agreement with Complainant's bargaining unit, the Bremerton Coaches and Activities Association, all coaching assignments "shall be for one year only." See Exhibit D at 3, Section 6.1; Exhibit M (notification of reasonable assurance memorandum from H.R.). By its terms, Complainant's contract expired upon completion of the 2015-2016 football season.

### **Policies and Procedures**

The District maintains a policy on "Religious-Related Activities and Practices" establishing guidelines regarding the preservation of student constitutional rights. Policy 2340, Exhibit F. The District also maintains a policy and procedure regarding non-discrimination. Policy and Procedure 5010, Exhibit N.

### **Establishment Clause Concerns**

The District's course of action in this matter has been driven solely by concern that Complainant's conduct might violate the constitutional rights of students and other community members, thereby subjecting the District to significant potential liability. In *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), the U.S. Supreme Court held that a school

district's practice of simply allowing its facilities to be used for religious expression during a district-sponsored football game violated the First Amendment's Establishment Clause because of the reasonable perception by students and attendees of district endorsement of religion. While attending games may be voluntary for most students, students required to be present by virtue of their participation in football or cheerleading will necessarily suffer a degree of coercion to participate in religious activity when their coaches lead or endorse it. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir: 1995).

Federal case law establishes that the District cannot allow an employee, while still on duty, to engage in religious conduct or display that a reasonable observer, aware of the context, would perceive as District endorsement of religion. This "endorsement" standard was identified by the Supreme Court in *Santa Fe*, and the federal courts have expanded upon it in the fifteen years since that decision. For example, in 2008, a federal appeals court held that a football coach who, like Complainant, was known to have previously led students in prayer must not be allowed even to kneel or bow his head while students prayed, as this would constitute District endorsement of religion in violation of the Constitution. *Borden v. Sch. Dist. of the Township of East Brunswick*, 523 F.3d 153 (3d Cir. 2008). And in 2006, the Ninth Circuit Court of Appeals held that a public employer's interests in avoiding such Establishment Clause violations "outweigh the resulting limitations on [an employee's] free exercise

of his religion at work.” *Berry v. Dep’t of Social Services*, 447 F.3d 642, 646 (9th Cir. 2006).

Given the similarity of facts to the *Borden* case, including Complainant’s now well-publicized history of leading students in prayer, if the District allowed Complainant to engage in a public religious display in the midst of the performance of his duties, the result would be the same as in *Borden*: The District would have been subject to liability for violating the rights of its students. Therefore, Complainant’s free exercise rights could be exercised only in a way that would not constitute a District endorsement of religion. The accommodations offered by the District were reasonable and would have allowed such exercise by Complainant, while respecting the rights of others.<sup>1</sup>

#### **Additional Requested Information**

Your office requested information regarding other District employees who engaged in similar conduct during the period January 1, 2013 to present. Request for Information No. 6. The District is not aware of any

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<sup>1</sup> It was suggested that the District could simply allow a moment of silence at football games to accommodate Complainant’s desire to pray. The District considered this option; however, the U.S. Supreme Court has ruled that a moment of silence adopted for the purpose of facilitating prayer constitutes state endorsement of religion in violation of the Establishment Clause. *Wallace v. Jaffree*, 472 U.S. 38 (1985). The various federal appeals courts have subsequently issued varying, possibly contradictory, decisions on this topic. At best, the constitutionality of a District endorsed moment of silence is debatable, particularly if the practice is adopted for the specific purpose of facilitating an employee’s desire to engage in a public religious display while on duty.

other employee who engaged in similar conduct during the requested time period.

Complainant contends that Assistant Coach David Boynton “has engaged in a Buddhist chant near the SO-yard line at the conclusion of many BHS football games” without adverse employment consequences. The first the District heard of this practice was in the media coverage surrounding Complainant’s filing of his complaint with EEOC. No District administrator has observed Mr. Boynton’s alleged conduct. To the District’s knowledge, Mr. Boynton’s activities at football games have not been overtly religious. Mr. Boynton has not been disciplined for this activity.

**Conclusion**

The District denies it discriminated against Complainant on the basis of religion. During the course of their duties, District employees must not take actions a reasonable observer would perceive as a government endorsement of religion. Complainant’s midfield prayers, which occurred immediately after the conclusion of official District athletic contests, under the stadium lights, and in full view of District parents, community members, and media, could very well be viewed as endorsement and subject the District to liability. The District also repeatedly offered to accommodate Complainant’s religious exercise in a manner consistent with the Establishment Clause.

JA 142

The District respectfully request that your agency dismiss the complaint. Please contact me if you require any further information.

Sincerely,

PORTER FOSTER RORICK LLP

[handwritten: signature]

Jeffrey Ganson

**Complaint, *Kennedy v. Bremerton Sch. Dist.*,  
No. 16-cv-05694 (W.D. Wash. Aug. 9, 2016)**

Plaintiff Joseph A. Kennedy (“Coach Kennedy”) brings this action for declaratory and injunctive relief in order to vindicate his constitutional and civil rights to engage in the private religious expression that is compelled by his sincerely held religious beliefs. The Bremerton School District (“BSD” or the “District”) violated those rights when it took adverse employment action against him because of that expression.

**I. NATURE OF THE ACTION**

1. Coach Kennedy has worked for nearly eight years as a popular and well-respected football coach at Bremerton High School (“BHS”).

2. This case is about Coach Kennedy’s right to pray quietly and alone at the conclusion of BHS football games, and to do so on the field where the game was played. Coach Kennedy’s sincerely held religious beliefs compel this brief, private religious expression.

3. Coach Kennedy’s practice fully complies with BSD’s written policies on “Religious-Related Activities and Practices,” which nowhere prohibit religious expression by on-duty school employees. Board Policy 2340, Aug. 13, 1992, Ex. A. It also complies with BSD’s initial letter to Coach Kennedy, which prescribed certain guidelines for his religious expression while reaffirming that “you and all District employees possess fundamental free exercise and free expression rights under the First Amendment.” Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 2.

4. BSD publicly admitted that there is “*no evidence*” that students have ever been “coerced” to pray with Coach Kennedy. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 1 (emphasis added). BSD also admitted that Coach Kennedy has never “actively encouraged, or required, [student] participation” in any religious activity. Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 2.

5. BSD further conceded that Coach Kennedy’s religious expression is “fleeting”—lasting no more than 30 seconds—and that no student, parent, or member of the community ever complained about that conduct in Coach Kennedy’s eight years of coaching at BHS. Letter to Coach Kennedy, Oct. 23, 2015, Ex. E, at 2; BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3-4.

6. But BSD was not satisfied with Coach Kennedy’s full “compli[ance]” with its “directives not to intentionally involve students in his on-duty religious activities.” BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 2. Instead of abiding by its written policies—and its initial letter to Coach Kennedy—BSD changed the rules.

7. In a sweeping new directive, BSD purported to prohibit on-duty school employees from engaging in any and all “*demonstrative religious activity*” that is “readily observable to (if not intended to be observed by) students and the attending public.” Letter to Coach Kennedy, Oct. 23, 2015, Ex. E, at 3 (emphasis added).

8. When Coach Kennedy engaged in the brief, quiet prayer that is required by his faith after the next BHS football game, BSD suspended him. The District



later retaliated against Coach Kennedy by giving him a poor performance evaluation—for the first time in his entire BHS coaching career—and then firing him because he purportedly “failed to follow district policy.” BSD Coaching Evaluation Form, Nov. 20, 2015, Ex. J.

9. BSD’s revised directive, which purports to ban any “demonstrative religious activity” that is “readily observable” to students or members of the public, is baldly unconstitutional. On its face, BSD’s policy would prohibit all on-duty school employees, while in view of any student or member of the community, from making the sign of the cross, praying towards Mecca, or wearing a yarmulke, headscarf, or a cross. After all, each of those actions is “demonstrative” religious expression and would be interpreted as such.

10. BSD’s actions violate Coach Kennedy’s First Amendment rights to free speech and free exercise, as well as his rights under Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of religion.

11. Coach Kennedy brings this Complaint to vindicate his constitutional and civil rights to act in accordance with his sincerely held religious beliefs by offering a brief, private prayer of thanksgiving at the conclusion of BHS football games.

## **II. PARTIES**

12. Plaintiff Joseph A. Kennedy resides in Port Orchard, Washington.

13. Defendant Bremerton School District is a school district located in Bremerton, Washington.

### **III. JURISDICTION**

14. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This action arises under the Constitution and laws of the United States; 42 U.S.C. § 1983; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”).

15. Coach Kennedy also seeks a declaration of his rights in this case of actual controversy under 28 U.S.C. § 2201.

16. This Court has personal jurisdiction over Bremerton School District because it is located in Kitsap County, Washington, which is within the area encompassed by the United States District Court for the Western District of Washington.

### **IV. VENUE**

17. Venue is proper in this court under 28 U.S.C. § 1391.

18. Defendant is located in Bremerton, Washington, which is within the area encompassed by the United States District Court for the Western District of Washington. A substantial portion of the actions and conduct complained of occurred in Bremerton, Washington.

### **V. STATEMENT OF FACTS**

#### **A. Coach Kennedy’s Background and Employment History**

19. Since 2008, Coach Kennedy has been employed as a football coach at BHS. He has worked as an assistant coach for the BHS varsity football team and the head coach for the BHS junior varsity football team.

20. Coach Kennedy is currently employed by the United States Navy at the Puget Sound Naval Shipyard and Intermediate Maintenance Facility in Bremerton, Washington. The claims at issue in this action relate only to Coach Kennedy's employment as a football coach with BSD.

21. Coach Kennedy was raised in the State of Washington. After playing football and wrestling at Naches Valley High School, near Yakima, Washington, he moved to Bremerton to complete high school. Coach Kennedy graduated from BHS in 1988.

22. After graduating high school, Coach Kennedy served on active duty in the United States Marine Corps from 1988 to 2006. He is a veteran of the Gulf War, where he served as a diesel mechanic for the Third Battalion, Eleventh Marine Corps Regiment.

23. After the Gulf War, Coach Kennedy served in numerous leadership roles in the Marine Corps, including training non-commissioned officer, substance abuse control officer, company gunnery sergeant, and company first sergeant. Coach Kennedy retired from the Marine Corps in 2006 as a gunnery sergeant.

24. Coach Kennedy had extensive experience coaching and mentoring high school students on a volunteer basis before he was hired as a football coach at BSD. He had previously worked as a volunteer football and wrestling coach at local high schools, including in Bellingham, Washington; Lewiston, Idaho; and Boise, Idaho. Joseph A. Kennedy Resume, Ex. H.

25. Upon information and belief, BSD initially hired Coach Kennedy in part based on the strength of

his leadership, his teamwork, and his experience mentoring student athletes.

26. Prior to fall 2015, Coach Kennedy received overwhelmingly positive performance evaluations, which confirm that he “d[id] an excellent job mentoring players and building character in them,” that “[h]is work with our players . . . is a great asset to our community,” and that “[h]is enthusiasm and positive attitude is great for team [morale].” *See, e.g.*, BSD Coaching Evaluation Form, Dec. 2012, Ex. I; BSD Coaching Evaluation Form, Mar. 2012, Ex. I; BSD Coaching Evaluation Form, Nov. 2009, Ex. I. Each of Coach Kennedy’s prior evaluations recommended that he be rehired for the following year.

**B. Coach Kennedy’s Religious Beliefs and Religious Expression**

27. Coach Kennedy is a practicing Christian. He is compelled by his sincerely held religious beliefs to engage in brief, private religious expression at the conclusion of BHS football games.

28. Coach Kennedy has engaged in private religious expression at the conclusion of football games since 2008, when he first started work as a BHS football coach. After watching the film *Facing the Giants* (2006), Coach Kennedy made a covenant with God that he would give thanks through prayer, at the end of each game, for what the players had accomplished and for the opportunity to be part of their lives through the game of football.

29. After the game is over, and after the players and coaches from both teams have met to shake hands at midfield, Coach Kennedy feels called to pause on the playing field to engage in private religious

expression. He takes a knee at the 50-yard line and offers a brief, quiet prayer of thanksgiving for player safety, sportsmanship, and spirited competition. That prayer lasts approximately 30 seconds.

30. Coach Kennedy is not motivated to engage in private religious expression in order to proselytize or attract others to his religious faith. Instead, he offers a brief prayer of thanksgiving as part of a covenant he made with God before he started coaching at BHS.

31. Because Coach Kennedy's prayer lifts up the players and recognizes their hard work and sportsmanship during the game, his sincerely held religious beliefs require him to pray on the field where the game was played. His private religious expression is outside the ordinary scope of his responsibilities as a BSD employee.

32. Initially, in 2008, Coach Kennedy prayed alone. After several games where he prayed alone, some BHS players asked whether they could join him. Coach Kennedy responded, "This is a free country. You can do what you want."

33. Over time, the number of players who gathered near Coach Kennedy after the game grew to include the majority of the team. The number of players who participated varied from game to game. Sometimes there were no players who gathered, and Coach Kennedy prayed alone. Sometimes BHS players invited players from the opposing team to join.

34. Eventually, Coach Kennedy began giving short motivational speeches to the players after the game. Those speeches often involved religious content.

35. Some former BHS players have said that they “didn’t view it as a prayer at all,” because Coach Kennedy “didn’t say ‘under God’ or anything involving religion. . . . He just gave us a post-game speech.” Kelsey Harkness, “After Losing His Public School Job for Praying, Coach Kennedy Speaks Out,” *The Daily Signal*, Jan. 26, 2016, <http://dailysignal.com/2016/01/26/after-losing-his-public-school-job-for-praying-coach-kennedy-speaks-out/>. Another former player has said that, “I prayed because I’m Catholic, but some walked off. There was never any pressure.” Christine Clarridge, “Crowd Prays with Coach as He Defies School District,” *Seattle Times*, Oct. 16, 2015, <http://www.seattletimes.com/seattle-news/education/scores-join-coach-in-postgame-prayer/>.

36. In the past, Coach Kennedy sometimes participated in pre- and post-game locker room prayers that the BHS football team engaged in as a matter of school tradition. This activity “predated [his] involvement with the program.” Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1. Coach Kennedy’s sincerely held religious beliefs do not require him to lead any prayer, involving students or otherwise, before or after BHS football games. He immediately ceased participating in all locker room prayers upon receiving instructions to do so.

37. At all times, as BSD concedes, “[e]ach activity has been voluntary,” and there is “no evidence” that students have ever been “coerced” to pray with Coach Kennedy. Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1; BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 1. Indeed, BSD has admitted that Coach Kennedy has never “actively encouraged, or required,

[student] participation” in any religious activity. Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1.

38. According to 2010 census data, approximately 73% of the people living in Kitsap County do not associate with a specific religion, making the Kitsap County population one of the least religious in the State. Association of Religion Data Archives, Kitsap County Membership Report, [http://www.thearda.com/rcms2010/r/c/53/rcms2010\\_53035\\_county\\_name\\_2010.asp](http://www.thearda.com/rcms2010/r/c/53/rcms2010_53035_county_name_2010.asp). But in the eight years since Coach Kennedy began working at BHS, no student, parent, or member of the community ever complained about his private religious expression after football games. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3-4.

39. Other BHS coaches have also engaged in religious expression at the beginning and end of BHS football games. For example, Assistant Coach David Boynton has engaged in a Buddhist chant near the 50-yard line at the conclusion of many BHS football games.

40. Upon information and belief, Coach Boynton has never been suspended, let alone dismissed, on the basis of his religious expression.

41. Upon information and belief, BSD has previously allowed unrestricted public access to the football field at the conclusion of BHS football games. Parents, fans, and members of the community frequently walked onto the field to congratulate players, meet with players, and socialize after the game. BHS Athletic Director Jeff Barton has described the football field as a public space that cannot be closed to members of the public.

42. Coach Kennedy does not pray in order to attract public attention or acclaim. Instead, he is compelled by his sincerely held religious beliefs to give thanks to God on the playing field at the conclusion of each game. His goal is simply to coach high school football in his hometown and to act in accordance with his religious convictions.

**C. BSD Issues an Initial Set of Directives for Coach Kennedy's Religious Expression**

43. Upon information and belief, BSD became aware of Coach Kennedy's post-game religious expression after an employee of another high school approached a BHS administrator to compliment him on Coach Kennedy's ability to bring players from opposing teams together at the conclusion of the game. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3-4.

44. On September 17, 2015, BSD Superintendent Aaron Leavell sent Coach Kennedy a letter announcing that BSD "has been conducting an inquiry into whether District staff have appropriately complied with Board Policy 2340, 'Religious-Related Activities and Practices.'" Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1. Board Policy 2340 provides as follows:

As a matter of individual liberty, a student may of his/her own volition engage in private, non-disruptive prayer at any time not in conflict with learning activities. School staff shall neither encourage nor discourage a student from engaging in non-disruptive oral or silent prayer or any other form of



devotional activity. Board Policy 2340, Aug. 13, 1992, Ex. A, at 3. Notably, Board Policy 2340 does not prohibit demonstrative religious expression by on-duty school employees.

45. BSD's September 17, 2015 letter admitted that any student participation in Coach's Kennedy's post-game religious expression was entirely "voluntary," that Coach Kennedy "ha[d] not actively encouraged, or required, participation" by the students, and that his actions were "entirely well intentioned." Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1; *see also* Letter to BSD Families, Staff, and Community, Sept. 17, 2015, Ex. C, at 1 ("To be clear: The BSD football coaching staff's conduct has been entirely well intentioned.").

46. BSD nevertheless opined that Coach Kennedy's actions "would very likely be found to violate the First Amendment's Establishment Clause." Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1.

47. In the September 17, 2015 letter, BSD prescribed certain guidelines for Coach Kennedy's private religious expression. Among other things, BSD stated that "[y]ou and all District staff are free to engage in religious activity, including prayer, so long as it does not interfere with job responsibilities" and is "physically separate from any student activity." *Id.* at 3. BSD further stated that, "[i]n order to avoid the perception of endorsement," Coach Kennedy's religious expression "should either be non-demonstrative (*i.e.*, not outwardly discernable as religious activity) if students are also engaged in

religious conduct, or it should occur while students are not engaging in such conduct.” *Id.*

48. After receiving BSD’s September 17, 2015 letter, Coach Kennedy temporarily stopped his practice of engaging in religious expression immediately after BHS football games. At the conclusion of the game on September 18, 2015, Coach Kennedy gave a short motivational speech to the players that included no mention of religion or faith.

49. On his drive home, Coach Kennedy felt “dirty” because he had broken his covenant with God. He turned his car around and went back to the field, where he waited until everyone else had left the stadium. Then Coach Kennedy walked to the 50-yard line, where he knelt to pray alone.

**D. BSD Denies Coach Kennedy’s Request for a Religious Accommodation and Issues a New—And More Restrictive—Set of Directives**

50. On October 14, 2015, Hiram Sasser, counsel for Coach Kennedy, sent a letter to Superintendent Leavell and BSD Board Members Scott Rahm, J. David Rubie, Jonee Dubos, Alyson Rotter, and Carolynn Perkins. Letter to BSD, Oct. 14, 2015, Ex. D, at 1. In that letter, Coach Kennedy informed BSD that he is compelled by his sincerely held religious beliefs—his covenant with God—to pray following each football game. *Id.* at 1-2. The letter further explained that Coach Kennedy’s private religious expression is protected by the First Amendment to the United States Constitution, and that there is no lawful basis to prohibit that religious expression.

51. In response to BSD's stated concerns about the Establishment Clause, the letter explained that, under controlling U.S. Supreme Court and Ninth Circuit case law, "[t]here can be no legitimate concern that the District is somehow establishing religion because it merely permits one of its coaches . . . to say a short personal prayer after a football game." *Id.* at 4.

52. In his October 14, 2015 letter, Coach Kennedy formally requested a religious accommodation under Title VII of the Civil Rights Act that would affirm his right to engage in a brief, quiet prayer at the 50-yard line at the conclusion of BHS games. *Id.* at 1, 6. Coach Kennedy also informed BSD that, beginning on October 16, 2015, he would continue his practice of saying a brief, private prayer following BHS football games. *Id.* at 6.

53. At the conclusion of the football game on October 16, Coach Kennedy walked to midfield for the customary handshake with the opposing team. He waited until the BHS players were walking toward the stands to sing the post-game fight song. Then he knelt at the 50-yard line, closed his eyes, and prayed a brief, silent prayer.

54. While Coach Kennedy was kneeling with his eyes closed, coaches and players from the opposing team, as well as members of the general public and media, spontaneously joined him on the field and knelt beside him.

55. On October 23, 2015, just hours before the football game scheduled for that night, Superintendent Leavell sent Coach Kennedy a second letter that "emphasize[d] [his] appreciation for [Coach Kennedy's] efforts to comply with the September 17

directives,” and acknowledged that Coach Kennedy’s religious expression on October 16 was “fleeting.” Letter to Coach Kennedy, Oct. 23, 2015, Ex. E, at 1-2.

56. Nonetheless, BSD went on to deny Coach Kennedy’s request for a religious accommodation and opine that his “overtly religious conduct” was prohibited by the Establishment Clause. *Id.* at 2.

57. In its October 23, 2015 letter, BSD claimed for the first time that Coach Kennedy’s religious expression—although “fleeting”—nonetheless “drew [him] away from [his] work,” including certain post-game supervisory tasks. *Id.* But BSD had never formally or informally assigned any post-game supervisory obligations that would prohibit Coach Kennedy from engaging in “fleeting” religious expression lasting no more than 30 seconds—a shorter period of time than would be required for a trip to the bathroom.

58. Instead, BSD invoked these alleged post-game supervisory tasks to discourage Coach Kennedy’s religious expression and discriminate against him on that basis.

59. BSD’s October 23, 2015 letter further suggested that that Coach Kennedy should abandon his typical practice and instead leave the field and go to a “private location within the school building, athletic facility or press box” in order to pray. *Id.* at 3. That invitation belies any concerns about post-game supervision, since traveling to a location dozens or hundreds of yards away would obviously take Coach Kennedy away from his players for a significantly longer period of time.

60. By suggesting that Coach Kennedy should pray in a “private location” that is physically separated from his players, BSD effectively admitted that post-game supervisory obligations are no reason to prohibit Coach Kennedy’s religious expression.

61. BSD’s proposal also failed to accommodate Coach Kennedy’s sincerely held religious beliefs, which compel him to pray on the playing field as he gives thanks for player sportsmanship and safety during the game that has just concluded.

62. The prohibitions laid out in BSD’s October 23, 2015 letter are significantly broader than those contained in its initial letter. The September 17, 2015 letter affirmed Coach Kennedy’s right to “engage in religious activity, including prayer” so long as it “does not interfere with job responsibilities” and is “physically separate from any student activity.” Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 3. The District’s October 23, 2015 letter, however, forbid Coach Kennedy from engaging in any “demonstrative religious activity” that is “readily observable to (if not intended to be observed by) students and the attending public.” Letter to Coach Kennedy, Oct. 23, 2015, Ex. E, at 3.

63. At the conclusion of the BHS varsity football game on October 23, 2015—the same day he received the District’s second letter—Coach Kennedy knelt alone at the 50-yard line and bowed his head for a brief, quiet prayer.

**E. BSD Places Coach Kennedy on Administrative Leave and Prohibits Him from Participating in BHS Football Activities**

64. On October 28, 2015, BSD placed Coach Kennedy on paid administrative leave and prohibited him from “participat[ing], in any capacity, in BHS football program activities.” Letter to Coach Kennedy, Oct. 28, 2015, Ex. F. The District’s stated reason for these adverse employment actions was that Coach Kennedy had “engag[ed] in overt, public and demonstrative religious conduct while still on duty as an assistant football coach.” *Id.*

65. BSD summarized its purported rationale for taking adverse employment action against Coach Kennedy in a public document entitled “Bremerton School District Q&A Regarding Assistant Football Coach Joe Kennedy.” BSD Statement and Q&A, Oct. 28, 2015, Ex. G. The District stated that it had placed Coach Kennedy on administrative leave because he “engag[ed] in overt, public religious displays on the football field while on duty as a coach.” *Id.* at 1. At the same time, the District conceded that Coach Kennedy “has complied with [BSD’s] directives not to intentionally involve students in his on-duty religious activities.” *Id.* at 2.

66. Upon information and belief, although BHS Assistant Coach David Boynton has engaged in a Buddhist chant at the 50-yard line at the conclusion of many BHS football games—and has continued to do so after BSD issued its October 23, 2015 letter—BSD did not take adverse employment action against Coach Boynton on the basis of his religious expression.

**F. BSD Retaliates Against Coach Kennedy By Giving Him a Poor Performance Evaluation and Failing to Re-Hire Him**

67. Prior to fall 2015, Coach Kennedy received overwhelmingly positive performance evaluations. *See, e.g.*, BSD Coaching Evaluation Form, Dec. 2012, Ex. I (Coach Kennedy “d[id] an excellent job mentoring players and building character in them”); BSD Coaching Evaluation Form, Mar. 2012, Ex. I (“[h]is work with our players . . . is a great asset to our community”); BSD Coaching Evaluation Form, Nov. 2009, Ex. I (“[h]is enthusiasm and positive attitude is great for team [morale]”). Each of those prior performance evaluations recommended that Coach Kennedy be rehired for the following year.

68. In November 2015, however, Coach Kennedy received a poor performance evaluation for the first time in his BHS coaching career. BSD Coaching Evaluation Form, Nov. 20, 2015, Ex. J. The November 2015 evaluation recommended that Coach Kennedy not be rehired because he allegedly “failed to follow district policy” regarding religious expression and allegedly “failed to supervise student-athletes after games.” *Id.*

69. In January 2016, Coach Kennedy’s contract was not renewed.

70. Although BSD attributed its adverse employment actions to Coach Kennedy’s alleged failure to follow district policy and supervise players, the District’s own correspondence makes clear that it acted on the basis of Coach Kennedy’s religious expression. *See* BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 1 (“This action was necessitated”

because Coach Kennedy failed to “refrain from engaging in overt, public religious displays on the football field while on duty as a coach”); Letter to Coach Kennedy, Oct. 28, 2015, Ex. F (Coach Kennedy “engag[ed] in overt, public and demonstrative religious conduct while still on duty as an assistant football coach”).

71. Upon information and belief, although Coach Boynton has continued to engage in private religious expression at the conclusion of BHS football games, BSD did not give poor performance evaluations to Coach Boynton or otherwise retaliate against him based on his religious expression.

**G. Coach Kennedy Files a Charge of Religious Discrimination with the EEOC**

72. Coach Kennedy promptly filed a complaint of religious discrimination with the Equal Employment Opportunity Commission (EEOC) on December 15, 2015. He filed a discrimination charge on January 30, 2016.

73. The U.S. Department of Justice issued a right-to-sue letter on June 27, 2016. Letter to Mr. Joseph Kennedy, June 27, 2016, Ex. K.

**VI. CAUSES OF ACTION**

**COUNT I – VIOLATION OF FIRST AMENDMENT RIGHT TO FREE SPEECH**

74. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

75. Pursuant to 42 U.S.C. § 1983, Coach Kennedy brings this claim against BSD for acting under color of



state law to deprive him of rights secured by the U.S. Constitution.

76. Coach Kennedy's private religious expression is fully protected under the First Amendment, which prohibits the government from "abridging the freedom of speech." This prohibition applies to state and local governments through the Fourteenth Amendment.

77. By BSD's own admission, Coach Kennedy's protected religious expression was a driving factor in its decision to take adverse employment action against Coach Kennedy.

78. BSD's ban on any demonstrative religious expression by Coach Kennedy violates the First Amendment, as does its decision to take adverse employment action against him because of such expression.

79. BSD has engaged in unconstitutional viewpoint discrimination against Coach Kennedy.

**COUNT II – VIOLATION OF THE FIRST  
AMENDMENT RIGHT TO FREE EXERCISE**

80. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

81. Pursuant to 42 U.S.C. § 1983, Coach Kennedy brings this claim against BSD for acting under color of state law to deprive him of rights secured by the U.S. Constitution.

82. The First Amendment likewise guarantees Coach Kennedy's right to freely exercise his religion.

83. BSD's blanket ban on any demonstrative religious expression by Coach Kennedy violates the First Amendment, as does its decision to take adverse employment action against him because of such expression.

**COUNT III – DISPARATE TREATMENT  
UNDER TITLE VII OF THE CIVIL RIGHTS  
ACT OF 1964**

84. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

85. BSD's decision to enforce its apparent policy banning all private, demonstrative religious expression by employees on duty against only Coach Kennedy—and not other similarly situated employees who also engaged in private, demonstrative religious expression—constitutes disparate treatment under the Title VII of the Civil Rights Act of 1964.

86. BSD directly discriminated against Coach Kennedy on the basis of his religion.

87. Specifically, the District's conduct constitutes discrimination on the basis of religion under 42 U.S.C. § 2000e-2(a).

88. Coach Kennedy is entitled to an injunction reinstating him as an assistant coach for the BHS varsity football team and the head coach of the BHS junior varsity football team under 42 U.S.C. § 2000e-5(g).

**COUNT IV – PROTECTED CHARACTERISTIC  
AS A MOTIVATING FACTOR UNDER TITLE  
VII OF THE CIVIL RIGHTS ACT OF 1964**

89. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

90. Coach Kennedy's protected religious expression was a motivating factor behind BSD's decision to take adverse employment action against Coach Kennedy.

91. Specifically, the District's conduct violates 42 U.S.C. § 2000e-2(m).

**COUNT V – FAILURE TO ACCOMMODATE  
UNDER TITLE VII OF THE CIVIL RIGHTS  
ACT OF 1964**

92. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

93. BSD failed to offer Coach Kennedy a reasonable accommodation that would allow him to exercise his sincerely held religious beliefs.

94. BSD's decision not to offer Coach Kennedy a reasonable accommodation to practice his sincerely held religious beliefs violates Title VII of the Civil Rights Act of 1964.

95. Specifically, the District's conduct violates 42 U.S.C. § 2000e-2(a) and 42 U.S.C. § 2000e-(j).

**COUNT VI – RETALIATION UNDER TITLE VII  
OF THE CIVIL RIGHTS ACT OF 1964**

96. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

97. BSD retaliated against Coach Kennedy as prohibited by Title VII of the Civil Rights Act of 1964 when it took adverse employment action against him on the basis of his opposition to a prohibited employment action: that is, discrimination against him based on his religious beliefs.

98. Specifically, the District's conduct violates 42 U.S.C. § 2000e-3(a).

**COUNT VII – FAILURE TO RE-HIRE UNDER  
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

99. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

100. BSD discriminated against Coach Kennedy as prohibited by Title VII of the Civil Rights Act of 1964 when it failed to re-hire him on the basis of his religious beliefs.

101. Specifically, the District's conduct violates 42 U.S.C. § 2000e-2(a)(1).

**VII. REQUEST FOR ATTORNEYS'  
FEES AND COSTS**

102. Coach Kennedy is entitled to recover reasonable attorneys' fees and costs under 42 U.S.C. § 1988(b), in an amount to be proven at trial.

103. Coach Kennedy is likewise entitled to attorneys' fees and costs under 42 U.S.C. § 2000e-5(k), in an amount to be proven at trial.

**VIII. JURY TRIAL DEMAND**

104. Coach Kennedy requests a jury trial on all issues that may be tried to a jury.

**PRAYER FOR RELIEF**

Coach Kennedy prays that this Court enter Judgment:

1. Declaring that BSD's discrimination against Coach Kennedy on the basis of his religious expression violates Coach Kennedy's freedom of speech as protected by the First Amendment;
2. Declaring that BSD's discrimination against Coach Kennedy on the basis of his religious expression violates Coach Kennedy's right to free exercise as protected by the First Amendment;
3. Declaring that BSD's actions violate Title VII of the Civil Rights Act of 1964;
4. Ordering BSD to reinstate Coach Kennedy to his previous positions as assistant coach of the BHS varsity football team and head coach of the BHS junior varsity football team;
5. Ordering BSD to provide Coach Kennedy with a religious accommodation that affirms his right to offer a brief, quiet prayer at the 50-yard line at the conclusion of BHS football games;

6. Awarding Coach Kennedy attorneys' fees and costs;
7. Awarding Coach Kennedy pre- and post-judgment interest; and
8. Awarding Coach Kennedy all other appropriate relief as the Court deems just and proper.

Dated: August 9, 2016      Respectfully submitted,

\*      \*      \*

*Counsel for Plaintiff  
Joseph A. Kennedy*

**Declaration of J. Kennedy in Support of  
Motion For Preliminary Injunction, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Aug. 23, 2016)**

I, Joseph A. Kennedy, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I have personal knowledge that the facts stated herein are true.
2. I have been employed as a football coach at Bremerton High School (“BHS”) since 2008. I have worked at BHS as an assistant coach for the varsity football team and the head coach for the junior varsity football team.
3. I was raised in the state of Washington. I played football and wrestled at Naches Valley High School, near Yakima, Washington.
4. I moved to Bremerton to complete high school and graduated from BHS in 1988.
5. After graduating from high school, I served on active duty in the United States Marine Corps from 1988 to 2006. I served in the Gulf War as a diesel mechanic for the Third Battalion, Eleventh Marine Corps Regiment.
6. After the Gulf War, I served in numerous leadership roles in the Marine Corps, including training non-commissioned officer, substance abuse control officer, company gunnery sergeant, and company first sergeant. I retired from the Marine Corps in 2006 as a gunnery sergeant.
7. Before I was hired as a football coach at BHS, I had extensive experience coaching and mentoring high school students on a volunteer basis. I had

previously worked as a volunteer football and wrestling coach at local high schools, including in Bellingham, Washington; Lewiston, Idaho; and Boise, Idaho.

8. Before the fall of 2015, I received overwhelmingly positive performance evaluations from my supervisors at Bremerton School District (“BSD”). Each of my prior performance evaluations recommended that I be rehired for the following year.
9. While I am coaching BHS football games, I often wear a shirt or jacket with a BHS logo. The clothing I wear while coaching BHS football games does not identify me as a BHS coach. I either purchased that clothing myself, or it was given to me by the booster club, which is composed of BHS parents. Many BHS parents and fans attend football games wearing shirts or jackets that are substantially similar or identical to mine.
10. I am a practicing Christian. My sincerely held religious beliefs require me to engage in brief, private religious expression at the conclusion of BHS football games.
11. After watching the film *Facing the Giants* (2006), I made a commitment to God that I would give thanks through prayer, at the end of each game, for what the players had accomplished and for the opportunity to be part of their lives through the game of football.
12. After the game is over, and after the players and coaches from both teams have met to shake hands at midfield, I feel called to pause on the playing field to engage in private religious expression. I



take a knee at the 50-yard line and offer a brief, quiet prayer of thanksgiving for player safety, sportsmanship, and spirited competition. My prayer lasts approximately 30 seconds.

13. I am not motivated to pray after football games in order to push my religious beliefs on BHS players, coaches, or anyone else. Instead, I offer a brief prayer of thanksgiving as part of the covenant I made with God before I started coaching at BHS.
14. Because my prayer lifts up the players and recognizes their hard work and sportsmanship during the game, my sincerely held religious beliefs require me to pray on the field where the game was played.
15. My private religious expression is outside the ordinary scope of my responsibilities as a BSD employee.
16. I have engaged in private religious expression at the conclusion of football games since 2008, when I first started work as a BHS football coach.
17. Initially, in 2008, I prayed alone. After several games where I prayed alone, some BHS players asked whether they could join me. I responded, "This is a free country. You can do what you want."
18. Over time, the number of players who gathered near me after the game grew to include the majority of the team. The number of players who participated varied from game to game. Sometimes there were no players who gathered, and I prayed alone. Sometimes BHS players invited players from the opposing team to join.

19. Eventually, I began giving short motivational speeches to the players after the game. Although I would never use exactly the same words, my post-game speeches would be something like this: “Lord, I lift these guys up for what they just did on the field. They battled for 48 minutes and even though they came here as rivals, they can leave here as friends. It doesn’t matter what our beliefs are-we believe in our team and we believe in each other.”
20. In the past, I sometimes participated in pre- and post-game locker room prayers that the BHS football team engaged in as a matter of school tradition. This activity predated my involvement with the program.
21. My sincerely held religious beliefs do not require me to lead any prayer, involving students or otherwise, before or after BHS football games. I immediately stopped participating in all locker room prayers upon receiving instructions to do so.
22. I never coerced, required, or asked any student to pray with me at the conclusion of games. For example, I never told any student that it was important that they participate in any religious activity. And I never pressured or encouraged any student to join me in my private religious expression.
23. I witnessed other BHS coaches engage in religious expression at the beginning and end of BHS football games. For example, BHS Assistant Coach David Boynton engaged in a Buddhist chant near the 50-yard line at the conclusion of many BHS football games.

24. To my knowledge, Coach Boynton was never suspended, dismissed, or subject to any other adverse employment action based on his religious expression.
25. BSD has previously allowed unrestricted public access to the BHS football field at the conclusion of football games. Parents, fans, and members of the community frequently walk onto the field to congratulate players and socialize after the game.
26. BHS Athletic Director Jeff Barton told me that the BHS football field is a public space that cannot be closed to members of the public at the conclusion of football games.
27. I do not pray at the conclusion of BHS football games in order to attract public attention or acclaim. Instead, I am required by my commitment to God to give thanks through prayer on the playing field at the conclusion of each game.
28. On September 17, 2015, BSD sent me a letter laying out certain guidelines for my private religious expression. That letter stated that my religious expression should either be non-demonstrative if students were also engaged in religious conduct, or it should occur while students were not engaged in religious conduct.
29. After receiving BSD's letter, I temporarily stopped engaging in religious expression immediately after BHS football games. I was struggling to figure out how to both follow the rules and honor my covenant with God.

30. At the conclusion of the game on September 18, 2015, I gave a short motivational speech to the players that included no mention of religion or faith. On my drive home, I felt dirty because I knew that I had broken my commitment to God. I turned my car around and went back to the field, where I waited until everyone else had left the stadium. Then I walked to the 50-yard line, where I knelt to pray alone.
31. On October 14, 2015, Hiram Sasser, my attorney, sent a letter to BSD Superintendent Aaron Leavell and members of the BSD School Board. That letter explained that I am required by my sincerely held religious beliefs-my commitment to God-to pray after BHS football games. In that letter, I formally requested a religious accommodation that would affirm my right to engage in a brief, quiet prayer at the 50-yard line at the conclusion of BHS games.
32. At the conclusion of the football game on October 16, I walked to midfield for the customary handshake with the opposing team. I waited until the BHS players were walking toward the stands to sing the post-game fight song. Then I knelt at the 50-yard line, closed my eyes, and prayed a brief, silent prayer.
33. While I was kneeling with my eyes closed, coaches and players from the opposing team, as well as members of the general public and media, spontaneously joined me on the field and knelt beside me.
34. On October 23, 2015, just hours before the football game scheduled for that night, BSD sent me a

second letter. That letter denied my request for a religious accommodation and forbid me from engaging in any demonstrative religious activity that could be observed by students or the public.

35. In its October 23, 2015 letter, BSD claimed for the first time that my religious expression drew me away from my work. But BSD had never formally or informally assigned me any post-game supervisory obligations that would prohibit me from engaging in religious expression lasting no more than 30 seconds.
36. BSD's October 23, 2015 letter suggested that I should abandon my typical practice and instead leave the field and go to a private location in the school building, athletic facility or press box to pray. These locations are dozens or hundreds of yards away from the football field. Traveling to any of these locations would take me away from my players for a significantly longer period of time than 30 seconds. BSD did not explain how my religious expression would be accommodated at away games—half of the games each season—as BSD has no control over the buildings and facilities in other school districts.
37. At the conclusion of the BHS varsity football game on October 23, 2015, I knelt alone at the 50-yard line and bowed my head for a brief, quiet prayer.
38. On October 28, 2015, BSD placed me on paid administrative leave and prohibited me from participating in any BHS football program activities in any capacity. BSD's letter stated that it was taking these actions against me because I had engaged in demonstrative religious conduct

while I was still on duty as an assistant football coach.

39. I was suspended the day before Senior Night, the last game of the regular season. I had to watch that game from the stands. Not being able to coach my team in the final game of the season was emotionally very difficult for me.
40. In November 2015, BSD retaliated against me by giving me a poor performance evaluation for the first time in my BHS coaching career. The evaluation recommended that I not be rehired because I had supposedly failed to follow district policy and failed to supervise players after games. Subsequently, I was not rehired for the following year.
41. By suspending and then firing me from my job as a BHS football coach, BSD has caused me significant and continuing harm. BSD has deprived me of the opportunity to coach and mentor young men that I care deeply about. As a high school football coach, I only have the opportunity to be part of these players' lives for a short period of time. It is a tremendous blessing to be able to be part of their lives through football, and to help them overcome challenges and emerge as stronger people.
42. I have never coached at BHS simply for the money. No amount of money can compensate me for losing the ability to mentor and have a positive impact on the lives of my players.
43. There are approximately 12 high school seniors on the BHS varsity roster for the 2016 season that I have coached since they were freshmen. Without

this Court's intervention, I will lose the opportunity to participate in their last season of high school football.

44. I would love nothing more than to get my job back and be back out on the field coaching football again at BHS. My goal is simply to act in accordance with my faith and to coach high school football in my hometown.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23rd day of August, 2016.

[handwritten: signature]

Joseph A. Kennedy

Tacoma, Washington

**Declaration of G. Steedman in Opposition to  
Motion for Preliminary Injunction, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Sept. 9, 2016)**

I, Garth Steedman, declare the following to be true under penalty of perjury under the laws of the United States:

1. I am the Assistant Superintendent of Finance, Operations and Human Resources for the Bremerton School District (“District”), am over the age of 21, and make this declaration based upon personal knowledge.

2. I have been employed by the District for two years. I previously served the District in the posts of Director of Human Resources and Executive Director of Finance, Operations and Human Resources.

3. In 2015, Mr. Kennedy was employed by the District as an assistant coach, which is a part-time position. He was employed under a one-season contract that expired at the conclusion of the football season. His stipend for a regular season was \$4,498. He was represented by the Bremerton Coaches and Activities Association pursuant to a Collective Bargaining Agreement. He had no other District employment in 2015.

4. During my time with the District, the evaluation process for an assistant coach has consisted of an evaluation by the head coach of the sport, with input by the Athletic Director of the school. The assistant coach then meets with the head coach or Athletic Director to go over the evaluation. If a coach is unhappy with his or her evaluation, the coach can then ask for the involvement of the school principal



and the appropriate person from the District office. In my first year with the District, in my capacity as Human Resources Director, I was asked to join with the Middle School principal in reviewing the evaluation that had been done of a coach.

5. I am familiar with the process that was used for Mr. Kennedy's evaluation in 2015. His head coach filled out an evaluation form dated November 12, 2015, which is Exhibit 8 to the Declaration of Michael B. Tierney in Opposition to Plaintiffs Motion for Preliminary Injunction ("Tierney Declaration"). The Athletic Director prepared an evaluation form signed December 16, 2015, which is Exhibit 9 to the Tierney Declaration. However, despite several requests from the Athletic Director, Mr. Kennedy never came in to meet with him and go over the evaluation. Mr. Kennedy also did not ask the high school principal or District office personnel to review or modify his evaluation. In this case, the appropriate District office person to participate would have been me, in my capacity as Executive Director of Finance, Operations and Human Resources, because the post of Human Resources Supervisor was occupied by Mr. Kennedy's wife.

6. At the conclusion of the 2015 football season, the head coach vacated the position after serving 11 years as head coach. All six of the other football coaching contracts also expired at the conclusion of the 2015 season. The District then opened all seven of the football coaching positions for applications. The District filled the head coaching position first so that the new head coach could participate in the selection of assistant coaches. It then filled all of the assistant

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coach positions with people who had applied for the jobs. Of the seven coaches from the 2015 season, four coaches chose not to apply for positions in 2016, including the former head coach. Among the former coaches who did not apply for 2016 jobs was Mr. Kennedy. Another previous coach who did not apply for 2016 was David Boynton. The person with oversight of the posting of jobs, interviewing and hiring of the 2016 positions was Mr. Kennedy's wife.

Signed at Bremerton, Washington this  
[handwritten: 9th] day of September, 2016

[handwritten: signature]

Garth Steedman

**Declaration of A. Leavell in Opposition to  
Motion for Preliminary Injunction, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Sept. 9, 2016)**

I, Aaron Leavell, declare the following to be true under penalty of perjury under the laws of the United States:

1. I am the Superintendent of the Bremerton School District (“District”), am over the age of 21, and make this declaration based upon personal knowledge.

2. I have spent 16 years of my career with the District, serving at various times as a teacher Assistant Principal, Principal, Assistant Superintendent, and Superintendent. This is my fourth year as Superintendent of the District. At various times with the Bremerton District or other districts, I have served as a football coach, track coach, basketball coach, and junior high athletic director.

3. The District enrolls approximately 5,057 students. It employs approximately 332 teachers and approximately 400 non-teaching personnel, not including substitutes.

4. I am familiar with the letter dated April 6, 2016 to the EEOC from the District’s lawyer responding to Mr. Kennedy’s complaint. The facts it states, its exhibits, and the position of the District it describes are accurate. The letter is submitted as Exhibit 10 to the Declaration of Michael B. Tierney in Opposition to Plaintiffs Motion for Preliminary Injunction (“Tierney Declaration”).

5. The issue of Mr. Kennedy's prayers generated substantial publicity. Once the topic arose, some people expressed concern about Mr. Kennedy's actions.

6. In the earlier stages of the issue with Mr. Kennedy, the publicity that was generated and the content of comments on social media led the District to have concerns about people joining Mr. Kennedy for prayer or otherwise coming on the District's football field immediately after the final whistle. I recognized that the District was not prepared for the substantial amount of effort it would take to secure the field in an orderly manner. For that reason, I decided not to attempt to prevent access to the field at that point. My email of September 18, 2015 (Tierney Declaration Ex. 11) addresses this point. Where my email states "Jeff, when the community comes down onto the field tonight after the game, we will not be able to prevent that from happening," it refers only to the state of the District's preparations, not its authority to limit access. There has never been any doubt about the District's authority to restrict access to its field and other District facilities immediately following football games. The District never had any intention of holding the field open for public access or of creating an open public forum.

7. Pictures were published in various media of Mr. Kennedy's post-game prayers. Tierney Declaration, Exhibit 1 is a photograph of Mr. Kennedy praying in the center of a group of players, members of the public, and news media personnel immediately after the game on October 16, 2015. Tierney Declaration,

Exhibit 2 is a photograph of Mr. Kennedy praying in the stands with others on October 30, 2015.

8. At the conclusion of the game on October 16, a large number of people came on to the field, some to pray with Mr. Kennedy. There were people jumping the fence and others running among the cheerleaders, band and players. Afterwards, the District received complaints from parents of band members who were knocked over in the rush of spectators on to the field. The District subsequently moved ahead with preparations for securing the field after games. The District made arrangements with the Bremerton Police Department for security, had signs made and posted, had “robocalls” made to District parents, and otherwise put the word out to the public that there would be no access to the field. The District had received notification from a group that identified itself as a Satanist religion that it intended to conduct ceremonies on the field after football games if others were allowed to. Representatives of that group were on the District’s grounds during a game, but they did not enter the stands or go on the field after learning that the field would be secured. Tierney Declaration, Exhibit 3 is a photograph of the Satanist group outside of the stands.

9. Players were observed to be praying with Mr. Kennedy when he did so after games in 2015. In terms of outward expression, no players appeared to be praying after games during the time Mr. Kennedy temporarily ceased this practice or after he was placed on administrative leave.

10. I have been acquainted with Dave Boynton for approximately 10 years or more. He is a former

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member of the Board of Directors of the District. I have never known Mr. Boynton to be a practicing Buddhist. The first that the District ever heard of an alleged Buddhist chant by Mr. Boynton was in news reports of Mr. Kennedy's EEOC complaint in January 2016.

Signed at Bremerton Washington, this 9th day of September, 2016.

[handwritten: signature]

Aaron Leavell

**J. Kennedy's First Set of Interrogatories,  
*Kennedy v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. May 19, 2019)**

\* \* \*

**INTERROGATORY NO. 3:**

Identify all instances in which the District applied Board Policy 2340 to a District employee, and describe in detail the circumstances and action taken.

Response:

Board Policy 2340 applies to all District employees. However, other than this case, the District is not aware of any instance in which Board Policy 2340 was specifically referred to for guidance in addressing a particular employee's circumstances.

Nonetheless, with respect to concerns about religious practices in general, the Principal at View Ridge Elementary, Korene Calderwood, recalls a situation where a teacher was using mindfulness strategies in a class and a parent was concerned that the students were being asked to participate in Hindu religious practices by saying "ohm." The Principal, and the Director of Elementary Education, Linda Sullivan-Dudzic, spoke with the teacher and ensured that anything that might relate to the Hindu religion would not be done with students. The teacher had not been aware that "ohm" had a religious history. Mindfulness strategies were continued without the use of the word "ohm."

**INTERROGATORY NO. 4:**

Identify all instances where an employee of the District requested a religious accommodation, and describe in detail the circumstances and action taken.

Response:

Apart from the events giving rise to this case, the District has no written records of religious accommodations being requested. However, some employees recall a few instances. The Director of Facilities and Operations, David Herrington, recalls that a custodian requested a Friday off for religious purposes, and that the request was granted.

A retired administrator, Denise Zaske, recalls that, probably more than ten years ago, a food service worker wished to have additional time off after spring break in which to return to the Philippines. The employee had apparently been given the time off in previous years based on the understanding that it was for a religious event. When it was eventually disclosed that the event in question was a family reunion and not a religious event, the request was denied.

At the Naval Avenue Early Learning Center, staff members on occasion have asked to not participate in some events such as the Nutcracker presentation, or Halloween parade. The Principal, John Welsh, recalls assigning other teachers to cover the classes when those situations arose.



**Transcript Excerpts From Deposition of  
D. Saulsberry, Sr. (July 10, 2019)**

[18] Q. Let's start with before.

A. No.

Q. And how about during or after?

A. Yes.

Q. Do you know of any particular coaches who thought badly of Coach Kennedy?

A. I don't know about the term "badly," but we were -- a lot of us were perturbed by the whole situation.

Q. What about the situation made you perturbed?

A. Because we teach our kids nobody is bigger than the team and that includes coaches. And, yeah, that's the way we look at it, that nobody's bigger than the team.

Q. What was it about Coach's actions that made you think he was being bigger than the team?

A. Because he wasn't at practice. And when the school district tells you to do something and your boss tells you to do something, you do it.

Q. Can you tell me about Coach's relationship with Nate Gillam?

A. Yeah. He always had a good relationship.

Q. What was Coach's reputation among the players?

A. All the -- as far as I know, all the players liked him.

Q. Was he looked up to as a coach?

A. Yes.

[19] Q. Would you say he's a mentor to the players?

A. Yes.

Q. What was the reaction to the players after Coach Kennedy was suspended?

A. Mixed.

Q. What was Coach Kennedy's reputation among the parents?

A. During this whole ordeal or beforehand?

Q. Let's start with beforehand.

A. He had a good reputation with their parents.

Q. Do you know of any parents that ever complained about him?

A. Not before the controversy, no.

Q. Do you know of parents that complained about him after the controversy?

A. Yes.

Q. What did they complain about?

A. The whole prayer situation where once it became an issue, you know, they didn't want their son partaking in it anymore.

Q. Can you tell me specifically the names of the parents that complained about Coach Kennedy?

A. All I remember is the first name [redacted]. I can't remember his last name.

Q. And [redacted] complained to you?

[20] A. No. He complained to Coach Gillam and he had a whole bunch of Facebook posts that he was complaining -- where he was complaining obviously.

Q. So let's talk about what happens at the end of a football game. When the whistle blows, the game's over, what happens next?

A. Well, our team usually all runs in front of our crowd, our home crowd, or if we're visiting, on our visitors' side in front of our crowd and sings our fight song.

Q. Before that do the players line up on the 50-yard line?

A. Oh, yeah. They first go shake the hands of the opposing team. And then after everybody shakes hands, then they all go sing the fight song.

Q. About how long does it take from when the whistle blows to where all the players have lined up and they've all finished shaking each other's hands?

A. A couple minutes. That didn't take very long. Usually when the players -- you know, depending on if it's a real close game, people start lining up on the 50 when it starts counting down. Within 10, 15 seconds of the end of the game, everybody starts lining up on the 50, then everybody goes shakes hands.

Q. So they line up in about 10, 15 seconds?

[21] A. Uh-huh.

Q. How long does it take for the teams to shake each other's hands, would you say?

A. Maybe a minute. Two minutes tops.

Q. So somewhere between 1 minute and 15 seconds and 2 minutes and 15 seconds?

A. For the whole thing, yeah. Line up, shake hands.

Q. And then after that, they head over and sing the fight song?

A. Yes.

Q. And how long would you say it takes from the time when all the players have shaken hands to when they're done singing the fight song?

A. Well, because a lot of times we've got to get the stragglers all over there so it takes maybe, like, 2, 3 minutes.

Q. And then what happens after the fight song?

A. Then the kids would go run out on the 50, meet Joe out at the 50-yard line.

Q. And what happens after that?

A. They would all go on the 50, and I presume that's when he was doing his prayer.

Q. Did you ever go out there?

A. No.

Q. Did that happen every game?

\* \* \*

[42] page 2?

A. The district -- "To the District's knowledge, Mr. Kennedy has complied with those directives not to intentionally involve students in his on-duty religious activities. However, he has continued to practice engaging in public religious display immediately following games while he's still on duty.

Q. Do you have any reason to dispute this?

A. No.

Q. I'd like to return to one comment that you made earlier. You said that Coach Kennedy had missed practices?

A. Yes.

Q. Which practices did he miss?

A. He missed a lot of them during and after this whole thing started.

Q. A lot of them. How many of them did he miss?

A. He would miss probably three to four practices a week.

Q. Can you tell me what days?

A. Specific days, I'm not sure. He'd be there on Fridays, Thursdays and Fridays, but most of the time he wasn't there. From what we were told, he was doing interviews.

Q. Three to four practices a week Coach Kennedy missed practice?

[43] A. Yep.

Q. But you don't remember any specific dates?

A. No. It was five years ago. Four years ago.

Q. Who said he was doing interviews?

A. Nate would. Nate Gillam. And then we would see him on TV.

Q. So the entire season is from August to October -- August to November, correct?

A. Yes.

Q. So during that season, it's your testimony today that Coach missed three to four practices a week throughout the entire season?

A. No, I didn't say that. After this whole thing started, after the whole prayer controversy, he started missing practice. He was at practice before that.

Q. And Nate Gillam told you that he was doing interviews?

A. Yes. And we would see him on TV.

Q. When would you see him on TV?

A. When I would go home The next day or whenever it aired on Fox and Friends and the O'Reilly Factor and Good Morning America. You name it.

Q. Do you know if Coach Kennedy was ever interviewed by the District when they were doing the investigation?

A. I'm not sure. I don't know.

[44] Q. Do you know if he ever left practice to do interviews at the request of the District when they were conducting the investigation?

A. I have no idea.

Q. So you don't actually know where coach was?

A. I mean, that's what I was told so -- and I would see him on TV, so one plus one equals two.

Q. Nate Gillam told you he was doing interviews?

A. Yes.

Q. But you don't know where he was; is that right?

MR. TIERNEY: Object to form.

A. I was just told that's where he was at. Because I would ask where's -- "Where's Joe?"

Q. (BY MR. FITZPATRICK) I want to turn to one other comment that you made. You said you were

upset with Coach Kennedy because nobody's bigger than the team?

A. Yes.

Q. Do you think by praying Coach was making himself bigger than the team?

A. Not by praying.

Q. Do you think that by refusing to stop praying, Coach was making himself bigger than the team?

A. Yes.

MR. FITZPATRICK: Could we go off the record for a minute?

[45] THE VIDEOGRAPHER: We're now going off record. The time is 5:21 P.M.

(Off the record from 5:21 to 5:28 P.M.)

THE VIDEOGRAPHER: We're now back on the record. The time is 5:28 P.M.

Q. (BY MR. FITZPATRICK) There's a big difference between when Coach would take a knee by himself at the 50-yard line versus when the students would gather around him, right?

A. Not really that big of a difference. I mean, the difference was when the kids would come out there, he wouldn't be on a knee. He would just stand and do his prayer. He only went on a knee, like, when he first started, like, when he was by himself.

MR. FITZPATRICK: Okay, Mr. Saulsberry. I think that's all we have for you.

THE DEPONENT: Okay.

MR. FITZPATRICK: Thanks for your time.

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MR. TIERNEY: No questions for me. We'll read the transcript if it's ordered.

THE VIDEOGRAPHER: This concludes the deposition of Derrick Saulsberry. The time is 5:31 P.M.

(Deposition concluded at 5:31 P.M.)



**Transcript Excerpts From Deposition of  
A. Leavell (July 11, 2019)**

[20] 6, that you are verifying the completeness and accuracy of the District's responses to these interrogatories?

A. Yes.

Q. I want to just draw your attention to interrogatory No. 6, which goes from the bottom of page 5 over to the top of page 6. Go ahead and review that and let me know when you're done.

A. Okay, I'm done.

Q. That interrogatory, the response to that interrogatory states, "Superintendent Aaron Leavell was the sole decisionmaker."

Do see that?

A. Yes.

Q. And that was in response to an interrogatory that states, "Identify all participants in the decision to suspend Coach Kennedy."

Do you see that?

A. Yes.

Q. Do you agree that you were the sole decisionmaker in the decision to suspend Coach Kennedy?

A. Yes.

Q. Go ahead and set that aside.

I want to talk just a little bit about

\* \* \*

[36] into the investigation into Mr. Kennedy?

A. Yes, yes.

Q. But again, Mr. Barton was not the final decisionmaker as to Mr. Kennedy's staff at the time as an assistant football coach?

A. Mr. Barton and the head coach at the time, Nate Gillam, were responsible for conducting Mr. Kennedy's performance evaluation. I was responsible for issuing the letter of administrative leave and placing Mr. Kennedy on leave. So I think there's two different things there.

Q. Okay. Would you have permitted Bremerton High School to rehire Mr. Kennedy if he wanted to continue engaging in his prayer activity?

A. That recommendation that came from Mr. Gillam and Mr. Barton indicated a lack of following directives as an assistant coach, and I'm not involved in the hiring of coaches so I would not have been involved in that.

Q. So I just want to be clear for the record here. Is it your testimony that you wouldn't have had any involvement in a decision to allow Mr. Kennedy to be rehired if he wanted to continue performing his midfield prayer after the football games?

[37] A. I would not have been involved. Had he applied for an assistant coach position, I would not have been involved in that decision.

Q. So you wouldn't have cared if Coach Kennedy was rehired and allowed to continue praying at midfield?

A. No, I didn't say that. I just said I would not be involved in the process at that level of hiring any assistant coach, whether it was Mr. Kennedy or not.

Q. I just want to make sure, your testimony today is that if Mr. Kennedy reapplied to Bremerton High School to be an assistant football coach, you would not have stopped that process based on your prior direction to Mr. Kennedy?

A. That part would be correct. I would not have stopped that process.

Q. If the decision had been made to rehire Mr. Kennedy and that Mr. Kennedy could continue performing the prayer, is it your testimony that Bremerton School District would have taken no action in response to that?

A. We would not have allowed him to continue, if he were rehired, to violate directives around religious activity.

[38] Q. So if Mr. Kennedy were rehired, the school district would not permit him to engage in the prayer at the 50-yard line immediately following the football game?

A. Correct.

Q. I want to talk a little bit about Bremerton School District policy 2340. Are you familiar with that policy?

A. Yes.

MR. ANDERSON: Go ahead and get this marked.

(Exhibit-4 marked.)

Q. The court reporter has handed you what's a lengthy packet that the school district produced to us in this litigation entitled Bremerton School District

Requirements for Coaches and Volunteer Coaching Staff.

Are you generally familiar with what this packet is?

A. At a general level, yes.

Q. Who assembles the various pieces that are in this packet?

A. I believe these are assembled by our human resources department and I believe it is our supervisor of human resources that puts this

\* \* \*

[52] say I first met him through my contacts with Denise, but I don't really remember.

Q. About how much time have you spent with Mr. Kennedy outside of the work context?

A. Not much time at all.

Q. Okay. So most of your interactions with Mr. Kennedy have come in the course of both of your employments?

A. Yeah, yeah, or his wife's employment, when Joe's visiting, yeah.

Q. Do you understand Mr. Kennedy to be a religious man?

A. Yes.

Q. Have you ever questioned the sincerity of his faith?

A. No.

Q. Are you aware Mr. Kennedy became a football coach around 2008 for Bremerton High School?

A. I am aware of that, yes.

Q. At that time were you still principal of Bremerton?

A. Yes, I was.

Q. And you left Bremerton High School in 2009; is that right?

A. Yes.

\* \* \*

[58] do you -- at the football games that you did attend, do you ever remember noticing Coach Kennedy engaging in any prayer-related activity?

A. No, I did not.

Q. To your knowledge, Joe Kennedy was a good example to the young men that were participating in Bremerton High School football?

A. Absolutely.

Q. He was a good mentor for them?

A. Yes.

Q. Do you think he had a positive influence on the lives of those young men?

A. I sure do.

Q. Do you ever receive -- let's break this up before September 2015 and after.

So focusing on before 2015, did you ever receive any complaints from players specifically about Coach Kennedy?

A. No.

Q. Did you ever receive any complaints from parents about Coach Kennedy?

A. No.

Q. And did you ever receive any complaints from coaches about Coach Kennedy?

A. No.

[59] Q. Did you ever receive any complaints from any of the other members of the Bremerton High School administration about Coach Kennedy?

A. No.

(Exhibit-7 marked.)

Q. Dr. Leavell, the court reporter has handed you Exhibit-7 and Exhibit-7 is a set of documents that we received from the District in a public records request.

A. Okay.

Q. That consists of a series of coaching evaluations for Coach Kennedy that span 2008 to, I believe 2012 is the latest one that was included in this packet. Do you see those?

A. Yes, sir.

Q. Do you remember reviewing these coaching evaluations at all in the course of your investigation, these prior coaching evaluations?

A. Yes. I was trying to think if I reviewed them all, but yes, I reviewed them.

Q. You generally remember looking at his file --

A. Yes.

Q. -- and his prior evaluations?

A. Yes.

[60] Q. And do you ever remember seeing any concerns raised in these evaluations about Coach Kennedy's performance?

A. Can I take a moment to look through them?

Q. Feel free.

A. Okay. Okay.

Q. My question was, do you ever remember seeing any concerns raised in Coach Kennedy's personnel file about his performance?

A. So I've not looked through his entire personnel file, but the documents here before me, no, no concerns ever came to me.

Q. And thinking back to your investigation in 2015 when you reviewed various documents including these on Coach Kennedy, do you remember ever seeing a document that raised concerns about his performance as a coach?

A. No, nothing was brought to my attention.

Q. In the documents, the performance evaluations that we've handed to you and marked as Exhibit-7, there was always the recommendation to rehire Coach Kennedy?

\* \* \*

[97] A. In my mind, yes, I assumed we were moving forward, moving on, if you will, from that immediate issue, yes.

Q. There was a varsity football game the next day, September 18, which was a Friday. Is that your recollection?

A. Yes.

Q. Were you at that game?

A. I believe I was at that game.

Q. Did you attend specifically because of wanting to see what would happen with the post-game activities?

A. I attended, A, because I attend football games and like to support the team, and B, I wanted to make sure that we had as many administrative staff there as possible because there was still a large uprising of social media people saying they were coming to support Coach Kennedy, and so I attended primarily for safety reasons.

Q. What do you remember about that September 18 game?

A. I don't remember much about that game. I don't remember much about it.

Q. Do you remember there being any crowd control issues?

[98] A. I don't remember there being crowd control issues during the competition, but I remember being worried that there were going to be many, many people and we did not have the resources in place to contain team people to just the stands. I'm pretty sure that was the game I was worried about.

Q. Do you remember what exactly happened? Was there a big flood of people who came down onto the field?

A. I hope I'm not getting games confused, but I think that was a game where there were several people that came down onto the field, who were not invited to come down to the field but came down to the field.

(Exhibit-17 marked.)



Q. So the court reporter, Dr. Leavell, has handed you what's been marked as Exhibit-17, which is an email from you to Bremerton School District board members dated Saturday, 9-19-2015 early that morning. Please let me know when you're done reviewing it.

A. Okay, yes, I've read it.

Q. Would you agree this email would have captured your contemporaneous recollection of what had happened at the prior night's football game?

A. No, this actually I think makes it [99] clear in my mind there was not the game that I was thinking of.

Q. It was the game that you were just describing a few minutes ago was -- you may have had them mixed up?

A. Yes.

Q. You would rely on what you said in this email the next morning as a more accurate representation of what had happened?

A. I would, yes. Thank you.

Q. So based on this email, it did not appear that there was any real problems that you saw with the way the post-game activities were conducted?

A. Correct.

Q. You noted that, this is the third sentence, "The post-game gathering was conducted well, and did not last that long."

Is that what you wrote in this email?

A. I did, yes.

Q. No reason to dispute that now?

A. No.

Q. Do you recall between now, --

A. I got you.

Q. -- I think it's between September 18 and the middle of October whether you attended any [100] other Bremerton High School football games?

A. I don't recollect if I did or not. I did not attend all of them. I do remember that.

Q. You don't remember one way or the other, though, whether you went to any particular games in the time period from here until the prayer issue resurfaced?

A. No, I don't remember. If I did, I may have stayed for a half and, you know, went home. I don't remember at this point.

Q. Let me ask this a different way.

Do you remember ever going to a game between the September 18th game and when the prayer issue resurfaced again with the purpose of observing Mr. Kennedy's actions?

A. Yes. When he resumed his actions, I did attend at least one game.

Q. My question was before that happened.

A. Yeah, I don't think I did, but --

Q. Did you ever assign anybody from the District to go and observe and listen to what Coach Kennedy was saying at this, the post-game?

A. Yeah, so I don't assign people to go to games, but the high school administration and athletic

director and there are some staff that are [101] paid to supervise games, attend them. And I believe I had asked either John Polm or one of the assistant principals to see if there was anything being stated other than a motivational speech.

Q. So as of Saturday, September 19, 2015, did you personally think that you had moved past this issue?

A. I was hoping that we had moved past this issue, certainly.

MR. ANDERSON: Let's go ahead and go off the record.

THE VIDEOGRAPHER: We're going off the record at 11:46 a.m.

(Lunch recess 11:46 a.m. to 12:37 p.m.)

THE VIDEOGRAPHER: We're back on the record. This is the beginning of disk number 3. The time is 12:37 p.m.

BY MR. ANDERSON: Q. Dr. Leavell, I want to come back to Exhibit-17, which I think was the last one we were looking at, your email to the board members of September 19, 2015. Do you have that back in front of you?

A. I do.

Q. This was your report from the

\* \* \*

[113] My question for you is, if you look at page 5, which follows the discussion of the case law, if you want to just look at the top paragraph on that page, I'll have a question for you about this.

The first sentence in that paragraph says, "No reasonable observer could conclude that a football

coach who waits until the game is over and the players have left the field and then walks to midfield to say a short, private, personal prayer is speaking on behalf of the state.”

Do you see that?

A. I see that.

Q. And that’s consistent with your understanding or this sentence is consistent with your understanding that Coach Kennedy was now asking to engage in a short, private, personal prayer at midfield after the game?

A. Yes. I’m just -- I’m not sure if he meant while there was still folks in the stadium, or after everyone had left and he returned to the stadium, but...

Q. What it states here is after the game. It does not specify whether it was immediately or sometime later; is that what you’re saying?

A. Yeah, that’s what I was asking.

\* \* \*

[125] that way. All coaches have the supervision duties after the game is over, and so he was still on duty and had supervision tasks to deal with as expected of all assistant coaches.

Q. So your point there was not that a brief, private, personal prayer itself was some abdication of supervision responsibilities, but that he had responsibilities generally so he was still acting as a coach when he was engaged in that activity?

A. Yes.

Q. The District certainly wouldn't discipline anybody for engaging in a 15 to 30-second phone call immediately after a football game, right?

A. I don't know. I would suppose there are different scenarios where that would not be appropriate to make a phone call immediately following a football game.

Q. So I want to be -- I want the record to be clear here. Is it your position if the District, if it saw an assistant football coach looking at his phone for 10 seconds immediately following a football game, the District would engage in a disciplinary action?

A. I would say --

[126] Q. That's a yes or no question, sir.

A. No.

Q. If, for example, an assistant coach went to go greet a spouse in the stands immediately following a game for 30 seconds to a minute, the District would not take disciplinary action against that assistant coach, correct?

A. Correct.

Q. So I want to move now to the third page. We were just on the second page. If we go to the third page, the second paragraph that begins, "Moreover," let me know if you have that in front of you.

A. Okay.

Q. The second sentence of that paragraph, Dr. Leavell, states, "He is free to engage in religious activity, including prayer, even while on duty, so long as doing so does not interfere with performance of his

job duties, and does not constitute District endorsement of religion.”

Did I read that correctly?

A. Yes.

Q. Here the District’s concern was that Mr. Kennedy’s prayer would constitute District endorsement of religion; is that right?

\* \* \*

[132] from Mr. Ganson that was issued in response to Mr. Sasser?

A. Okay.

Q. And you see that Mr. Sasser then provides an email response later in the afternoon of Friday, October the 16th?

A. Yes.

Q. And that this response was given also prior to the beginning of the football game against Centralia that night?

A. Could you ask me that again?

Q. Yeah. My question was just, this email was sent prior to the beginning of the football game against Centralia on the 16th?

A. Yes, it appears to be.

Q. If you turn, it’s going to be the second page of the exhibit here, the third and fourth -- really I guess the first paragraph on that page, counsel for Mr. Kennedy proposed including a disclaimer that Coach Kennedy is acting in his private capacity and not as a representative of the school district prior to Mr.

Kennedy praying at the 50-yard line himself. Did the District ever consider providing a disclaimer?

A. I believe we had discussed the [133] possibility of the disclaimer and arrived at the conclusion in our mind that because of the previous actions by Mr. Kennedy, that to a reasonable observer, it would be perceived as overtly religious expression and so we did not entertain it any further.

Q. So the District considered it and determined it would not be an effective accommodation in that context or acceptable accommodation?

A. Yes.

Q. Now, later that evening, and you can refer back to the Exhibit-No.-23, which is the football schedule, there was a varsity football game against Centralia High School?

A. Yes.

Q. Did you attend that football game?

A. I believe I attended that football game. I think that, yes.

Q. In addition to yourself, did you ask anybody else from the Bremerton District administration to be at that game?

A. I don't know if I asked anyone else to be there. I may have asked my assistant superintendent, I may have asked our athletic director to make sure that he was there. I don't [134] know who else I would have asked.

Q. You recall yourself being in attendance?

A. I'm pretty sure that I was at that game.

Q. You can't be certain?

A. Well, I can't be certain. I was just thinking back to when I had the games confused in my head before. I mean, it was four years ago, I'm sorry. I believe I was in attendance at this game.

Q. Okay.

A. Yes, I believe I was there.

Q. Do you recall Coach Kennedy engaging in prayer at the 50-yard line at the conclusion of the Centralia game?

A. Yes, I believe so.

Q. Do you recall about how long that prayer lasted?

A. No, I don't recall, but I believe it was less than a minute.

Q. Yeah.

A. About a minute.

Q. Other than Coach Kennedy, do you remember whether anybody else was on the field with him?

\* \* \*

[144] Q. It states, "When a school official decides to lead a prayer, he or she puts students in an awkward position."

Do you see that?

A. I do.

Q. Do you agree with that?

A. Yes.

Q. Now, if you look at your email response to Mr. Dorn at the top of Exhibit-29, can you read the third sentence out loud, the one that begins "The issue"?



A. "The issue is quickly changing as it has shifted from leading prayer with student athletes, to a coach's right to conduct a personal, private prayer on the 50-yard line."

Q. You just testified that you don't have -- that you agree with the statement that you don't have a problem with students or staff exercising their right to silently pray on their own, right?

A. Correct.

Q. Your problem with Coach Kennedy's prayer was the timing of the prayer, specifically that it was right after the game, and then the location of the prayer, that it was at the 50-yard

\* \* \*

[149] A. Correct.

Q. Why was this decision made to have this letter issued from you as opposed to Mr. Ganson?

A. Because I am the superintendent who was being the decisionmaker in this case, and because it involved a topic that is not my area of expertise, I relied pretty heavily on legal advice on how to handle this from the school district perspective.

Q. When you say topic not within your area of expertise, you mean First Amendment constitutional law?

A. Yes.

Q. Holdings of cases about what school officials can or can't do.

A. Yes.

Q. Is that correct? Okay.

So I want to walk through this letter beginning with the first paragraph. Can you just read that paragraph out loud?

A. "On September 17, 2015, I provided you with guidance and a set of standards for compliance with Bremerton School District Board Policy 2340. Those directives were in response to your prior practices involving on-the-job prayer with players in the Bremerton High School football program, both in [150] the locker room prior to games, as well as on the field immediately following games. In general, I believe that you have attempted to comply with the guidelines set forth in that letter."

Q. What did you mean by that last sentence, "In general, I believe that you have attempted to comply with the guidelines set forth in that letter"?

A. I believe that Mr. Kennedy was at times attempting to abide by the directives of the District in the sense that he was not leading student-led prayer as he previously was, technically in the locker room and immediately following the games.

Q. The difference here was that he was attempting to do a personal prayer, as opposed to having a coach-led student prayer?

A. I mean, that's what it appeared his intentions were, yes.

Q. That was what you were referencing here when you say you believe he attempted to comply with the guidelines?

A. Yes.

Q. Then you go on to state in the next paragraph, recap what had happened at that Centralia game that we were discussing; is that right?

\* \* \*

[156] Q. The next sentence you state, "More importantly, any reasonable observer saw a District employee, on the field only by virtue of his employment with the District, still on duty, under the bright lights of the stadium, engaged in what was clearly, given your prior public conduct, overtly religious conduct."

Do you agree with that statement?

A. Yes.

Q. So the issue was concern about the public perception given the history here that if Mr. Kennedy continued to do this, even by himself, that that would be perceived as an endorsement by the school district of religion?

A. Yes.

Q. I'll turn now to page 3, Dr. Leavell, the last page.

A. Yup.

Q. If you look at the first paragraph there, here you describe or you propose a potential accommodation for Mr. Kennedy. Would you agree with that?

A. Yes.

Q. You propose allowing him to pray at a private location within the school building itself, [157] right?

A. A brainstorm idea, yes.

Q. You also propose potentially having this prayer take place in the athletic facility?

A. Yes.

Q. And then also potentially the press box.

Can you help me now, I haven't been there. How far is the school building from the football field, about how long does it take to walk?

A. Probably a minute.

Q. A minute from the center of the football field to get inside the building?

A. Yeah, it's right there.

Q. What about the athletic facility? Is that a different building than the main school building?

A. It is, yeah. It's -- butts up against -- you go up a set of stairs, it's right at the top of the stairs from the football field.

Q. Again, about a minute or two to walk over there?

A. No.

Q. Less?

A. 30 seconds probably.

[158] Q. What about the press box, does that sit at the top of the stands?

A. Yeah, we have a small set of stands with a covered press box area.

Q. About how long would it take to walk from the football field up to the press box?

A. Probably a minute by the time you got up there.

Q. So it would take about a minute to get there and back from the school building, a minute to get from there and back to the press box -- strike that. Let me reask the question.

So it would take about two minutes to get there and back to the school building, two minutes to get there and back to the press box, and then a minute or so to get there and back to the athletic facility, just speaking roughly?

A. Yes.

Q. And that would have taken coach away from the team for a greater length of time than it would have been if he had just remained on the field and said a quick prayer?

A. It would have, what -- we could have the opportunity to talk because we were making an accommodation, we may have had another coach assist [159] in the supervision temporarily to accommodate his prayer.

Q. How many assistant coaches are on the Bremerton High School team?

A. I don't know. I don't know how many exactly.

Q. More than five?

A. I would assume so.

Q. Around ten?

A. I don't really know. I think there's probably, there's probably seven or eight, I would assume.

Q. Several?

A. Yes.

Q. There's several assistant coaches and those assistant coaches are all involved in -- as you said in the letter, all have generally the responsibility to maintain supervision of the student athletes until they depart the facilities following the game?

A. That's the expectation.

Q. Let's turn to the last paragraph where you start, where you say, "To summarize," and can you read that for me?

A. The whole paragraph?

[160] Q. The first sentence. Thank you.

A. "While on duty for the District as an assistant coach, you may not engage in demonstrative religious activity, readily observable to (if not intended to be observed by) students and the attending public."

Q. So the determinant of concern here was, you note here was the public observation of coach acting as a coach and engaging in the prayer; is that right? That's why you proposed the accommodation of putting him someplace that was not in public view?

A. Yes, we wanted to find an amenable accommodation for that that was not front and center in front of students and community for that purpose.

Q. Just to be clear for the record, that was because of the District's belief that the public being able to see coach praying posed this endorsement issue under the First Amendment?

A. Yes, while in coaching gear and still on duty.

Q. So coming back to what we were talking about earlier, it was both the time, the fact that it was immediately after the game, and then the location

being at midfield that in the District's view that that was the -- those were the factors that created a

\* \* \*

[164] Q. Did you ask any of your administration staff to be at that game, at either of those two games?

A. Yes.

Q. Who did you ask to be there?

A. They would have been there anyway to supervise, but I believe I asked -- it was either the principal, John Polm, or I think it was the assistant principal, Ryan Nickels.

Q. I want to talk about the first video, which was video from the -- after the varsity game against North Mason.

A. Okay.

Q. This was the one that was a little grainer that we had to watch twice. Did you recall seeing Coach Kennedy on a knee near the middle of the field at a one point in that video?

A. Yes.

Q. Would you agree that the time he was on a knee was about 15 seconds or less?

A. Yes.

Q. Did you see any other students praying with him at that time?

A. Not at that time.

Q. My question is specifically about the [165] October 23rd game. So your testimony is you didn't observe any students praying with him?

A. It's hard to make it out, but not that I could see.

Q. Based on the video?

A. Based on that video, no.

Q. At that point in time, the Bremerton High School students were moving out of the handshake with the opposing team going to go sing the fight song; is that what it looked like?

A. Well, it looked like they were moving out of there -- I don't know if that is something they do on away games. I don't know if they go to sing the fight song or not. So I can't verify that.

Q. Was that an away game, the North Mason game?

A. It looks like it, but I don't know.

Q. When you say it looked like it, what was it, the color of uniforms?

A. It didn't look like our home uniforms and it really didn't look like our field, so I think that was an away game.

Q. You don't know one way or the other whether the fight song is a tradition that is followed at away games?

[166] A. I don't, actually. I assumed it was. I think it's a home game tradition, but I could be mistaken.

Q. And in that video, did you see other football coaches milling about in that immediate aftermath of the game?

A. It appeared that I saw one coach talking with another, with a North Mason coach.

Q. You would agree that the 10 to 30 seconds, however long it was that coach was on a knee based on



that video, it did not appear coach was ignoring supervision of any of the players?

A. Well, for that time that he was doing that, if he was kneeling with his eyes closed, it would be hard to do supervision.

Q. But no different than if a coach was briefly checking his phone for a sports score?

A. I don't know. I mean, if the coach is checking a sports score, he might be able to have more of a line of sight, his eyes open.

Q. What about if the coach had to kneel down and tie his shoe, look at his shoe, would you think the coach was ignoring his supervisory responsibilities to kneel down to tie his shoe for 20 seconds?

[167] A. No.

Q. The second video was the junior varsity game. That was again the video that had a little bit of a higher resolution.

A. Uh-huh.

Q. Similar question, it appeared to be that coach kneeled down for about 10 to 20 seconds, approximately, for that prayer?

A. It appeared to be.

Q. And you saw the student athletes return to coach only after he had completed the prayer?

A. Yes, it sounded like after they had sang the fight song.

Q. Do you know whether the North Mason JV game was home or away?

A. That appeared to be at home.

Q. And you base that off of the appearance of the field?

A. Again, I think same scenario, it looked like the home uniforms and it looked like our field.

Q. Are the purple uniforms traditionally the home uniforms?

A. They're blue.

Q. Blue, excuse me. A. Blue and gold, yes.

[168] Q. The blue and gold?

A. (Nods head.)

Q. Okay, and again, the student athletes returned to Coach Kennedy only after he prayed and they sung the fight song, right?

A. That's what it looks like.

Q. So they were still under his supervision at that point in time?

A. As they came back to him, yes.

Q. Yes.

And it was based on Coach Kennedy continuing to engage in prayer at these two North Mason games, first the varsity one and then the junior varsity one, after receiving this additional letter from you on October 2rd, that was the basis for your decision to place him on administrative leave?

A. My basis for putting Coach Kennedy on leave was that he continued to disobey directives from me. He was invited to come meet with me to further discuss any accommodations or solutions, and he did not engage on that level.

He continued to do exactly what his position and his position of his attorneys outlined for him to do in the letter that was sent to me and [169] made it very clear in that letter that the only accommodation that would be suitable for Coach Kennedy was to continue the exact practice that he was already engaged in.

Q. That practice was the practice that we saw on those two video clips that we just watched from those North Mason games?

A. Yes.

Q. If coach had stopped engaging in the type of prayer that we just saw on those videos for those North Mason games, you would not have acted to place him on leave; is that right?

A. If Coach Kennedy had reengaged with us as invited and we were able to come to an agreement on an accommodation that meets his religious needs and didn't jeopardize the District with litigation, then there would be no -- there would be no reason to continue to place him on leave, but --

Q. When you say -- sorry.

A. I was going to say, but he continued to conduct himself in the manner in which he said he was going to, and so I continued to write letters of direction that are nondisciplinary in hopes that we could come to a resolution so that Coach Kennedy could continue coaching our students.

[170] Q. When you said jeopardized the District with litigation, you're referring to potential litigation that could be brought against the District for the District violating the First Amendment by allowing Coach Kennedy to engage in the prayer; is that right?

A. Correct, yes, correct.

Q. And just so we're clear for the record, when you said, when you referred to Coach Kennedy conducting himself in that manner, you're referring to the manner, you're referring to the prayer like we just saw in the two videos?

A. I'm referring to him participating in overt displays of religious activity.

Q. Such as kneeling and bowing one's head on the middle of the football field after a game?

A. Yes, because he had told the world that that is what he was doing. So yes.

Q. And then the District's view was, given that context, him kneeling on the field would only have been perceived as him actually engaging in prayer, and the District allowing him to do that would be the District effectively saying this is okay, this is a permissible activity for a coach after a game?

\* \* \*

[197] A. Yes.

Q. Is it your testimony today that consistent with the representations made here to the government, that the District's course of action in this matter has been driven solely by concern that Mr. Kennedy's conduct might violate the constitutional rights of students and other community members, thereby subjecting the District to significant potential liability?

A. Yes.

Q. And that would be a true, accurate and complete description of the reason for the District's actions?

A. Yes, it's accurate.

MR. ANDERSON: I don't have any further questions at this time.

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**Transcript Excerpts From Deposition of  
J. Polm (July 12, 2019)**

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[46] Q. And what was that lack of cooperation, was that him continuing to pray?

A. Mr. Kennedy received direction to avoid heading out to the field at the conclusion of the fourth quarter and I was -- I shared that direction with him, made sure he understood what the expectations were, that he was a representative of the school district still on the job and that he should not be leading prayer for kids, that that's a kid function. If the kids want to do that, they're totally okay to do that, but he should not do that in his capacity as a coach. And so by his lack of compliance with that direction, that constituted not being cooperative with administration.

Q. So by continuing to pray on the 50-yard line, that was lack of cooperation; is that correct?

A. Well, I think, yes, I think that his continuance, because I don't believe it was just praying, I think it was the whole spectacle that took place and the disruption to the events for students and all of the consequential impact to supervision, safety, restrictions on the field, all the things that had to take place in the sake of safety were really initiated by his lack of cooperation and lack of compliance with expectations which were typical [47] for any employee of the school district.

Q. Are you saying his prayers were unsafe?

A. The spectacles on the field became unsafe, which was when the public went out onto the field, we could not supervise effectively. We had an inability to

keep kids safe and so that was definitely caused by his actions or lack of cooperation.

Q. Were there any injuries of children?

A. Not that I'm aware of other than perhaps people tripping over the cables when they jumped over the fence. I saw people fall, but whether they were injured or not, I wasn't aware of.

Q. So your direction to Coach Kennedy was to cease praying on the field; is that correct?

A. My direction to Coach Kennedy was to do his job as coach, supervise the students like he was assigned. My understanding is that the head coach had certain duties for all the assistant coaches, and my understanding is that Joe's were partially to continue to supervise students off the field to the locker room, make sure they got home safely or left the school.

And then that if there were any altercations, often there's a potential for, you [48] know, tempers flaring after games, we need coaches supervising to assure that kids don't get in physical altercations, both with the team or with the other team. Those were part of his responsibility to maintain, you know, kind of line of sight of kids and then be in the locker room after the game.

Those were -- and my direction was, as soon as that's done, you can go out and pray at midfield or do whatever you want to, but your job is to be a coach first.

Q. While on duty, he was forbidden from praying; is that correct?

A. No. I think he had an ability, anybody can pray while you're on duty very easily without going to the 50-yard line and bringing a bunch of people with you.

Q. Would he be permitted to pray alone on the 50-yard line?

A. As I said, my comment to him was he could certainly do that after the game was -- after the event was completed, uh-huh.

Q. After the game ended?

A. Because his action was actually during the event. Even though the fourth quarter may have ended, the game, the event is not over. We have [49] plenty of supervision that takes place after an event and coaches retain -- and my position in the position of the District was that he's still on the job until the event is over.

MR. LANE: I think now is a good time for a break. We're almost at an hour and we'll circle back on this.

THE WITNESS: Okay.

THE VIDEOGRAPHER: We're now going off the record. The time is 9:51 a.m.

(Brief recess.)

THE VIDEOGRAPHER: We're now back on the record. The time is 10:04 a.m.

Q. A couple of follow-up questions, Dr. Polm, about what we were just discussing.

Roughly how many assistant coaches were there?

A. I will do my best. So the football coaching staff, I will estimate there were five paid coaches, and they



had four or five volunteer coaches with them at various times, the paid -- five paid coaches.

Q. But total coaching staff?

A. I'm not sure. It varied. I think some of the coaches worked and they weren't always around, [50] so I think other people would be better to know the specifics on that than myself.

Q. Did they all remain on the field after games?

A. I'm sorry, I don't recall. I don't know that information.

Q. You mentioned earlier that you frequently didn't stay until after the game; is that correct?

A. That's correct.

Q. You left before the game ended?

A. That's correct.

Q. How often did you attend Bremerton High School football games before 2015?

A. Home football games, if I was in town, I tried to attend all of the home football games for at least the first half. I did not attend away football games at all unless it was convenient. I lived in Poulsbo part of the time, so I recall maybe going to one or two games in Poulsbo through the years.

But typically I would only attend home games, and again, we had other staff that I had assigned to the games. So I would usually stay until the band was finished with their half-time show and [51] the ticket-taking was wrapping up, and then I would usually head into the school and then head home.

Q. And what year did you start attending Bremerton football games?

A. I started working in Bremerton in 2010.

Q. And you attended with that same level of consistency your entire tenure?

A. Yes, until September of 2015 and at that point I stayed for the whole games through the end.

Q. Every game?

A. Home games. Not away games.

Q. Every game that season, every home game?

A. I don't know for sure. That's a good question. I would say as soon as this incident came up with Joe, I did. So I don't know, I think we may have had one or two games before that. I don't recall the exact schedule.

Q. Where did you typically sit at these game?

A. Typically did not sit at the games. I typically would be on the upper field, back to Exhibit-2. So my office was on the third floor and what I typically would do is -- well, I would arrive [52] at work about 6 a.m. and then after the school day, I would stay and then I ended up doing a lot of office time, so I would be up there even as people are beginning to kind of gather down below.

Then I would usually head out about 6:30 to be -- to supervise, and I would be on this upper field area (indicating) where a lot of the public would be headed toward the field, and our kids, our band kids would be preparing for going on the field. We had a drill team.

It helped to have extra adults around. Of course, that's where the locker room entrances were as well and the opposing team bus would show up there, that

sort of thing. So I would just participate and hang out, and hang out up there as an extra adult.

And then during the game, after the game would begin, more detail than you care to know, I suppose, but the band would usually march down the street on Ohio and they'd enter the stadium at the far end. So I would provide some extra eyes on that, just to make sure that there were no public nuisances interfering with that process. And then they would march into the far end of the stadium.

I usually would actually go walk down [53] to that end of the stadium. I would usually stay down there for the national anthem, the beginning of the game. I would then move way around and a lot of times, it varied a little bit. We were on radio communication with the administration and campus security, so I would be up on this area (indicating) where we would have some students that needed to be monitored and corrected.

Then I would head back and really I tried to be in this concession area (indicating) during the first half where we tried to keep the visitors, fans on the visitors side and the home fans on the home side. And they tended to congregate there, so there was usually a lot of people there. That's where I would typically stay.

That's where we would have trouble; if we were going to have a fight or something, that would be where it would happen. And so I needed to be kind of up in that area. And like I said, the sitting wasn't really an option for me during a game, I was moving around.

Q. Before the 2015 season, did you observe Coach Kennedy praying?

A. I was not aware that Joe was praying. I was aware, I was aware maybe once or twice if I was [54] at the end of a game of the teams coming together, but I wasn't anywhere near it so I wasn't aware of what was being said at all. So my first awareness was in September of 2015.

Q. So there were no complaints about him praying before September 2015?

A. Correct.

(Exhibit-3 marked.)

Q. I've just handed you what we've marked as Exhibit-3. That is an email from Patty Glaser to Aaron Leavell, as well as you, Dr. Polm, Lynn Caddell, Garth Steedman, Jeff Barton. Do you recall this email?

A. I don't recall specifically, but I recall communication like this. But yeah, I don't think I've seen this email. If I did, it was many years ago.

Q. Do you see the first line in Coach Kennedy's post says, "I might have gotten fired from coaching tonight."

Did someone tell Coach Kennedy that you're aware of after the September 11 game that he would be fired?

A. I'm not aware of who may have said that to him. I did not say that to him.

[55] Q. Do you remember what happened at the September 11 game?

A. Do you know who the opponent was? Rather than dates, I think I can recall better on team.

Q. So this should help.

(Exhibits-4 and 5 marked.)

A. Yeah, that would have been Klahowya or at Silverdale stadium.

What was the question?

Q. Do you know if Coach Kennedy prayed that evening?

A. I don't know for sure. Based on what he said here, evidently he did. I mean, I wasn't at that event.

(Exhibit-6 marked.)

Q. So this exhibit marked as 6 is an email from you to Mr. Leavell. Do you remember this email?

A. Yes.

Q. You mentioned that "a coach from another school's football team talked to me and told me that a coach at BHS had asked him and his team to join him and his team (Bremerton's) after their game to pray last season."

Do you know who that coach was?

[56] A. Yes, I do.

Q. What did that coach tell you?

A. Just that he thought it was pretty cool how we would allow our coaches to go ahead and invite other teams' coaches and players to pray after a game.

Q. Was that the first you heard about Coach Kennedy praying?

A. Yes, that was the first I heard.

Q. Tell me, what is Coach Gillam's role in supervising Coach Kennedy?

A. Coach Gillam was the head coach. He was directly responsible to supervise Coach Kennedy for the varsity events, and I believe during all practices,

he would assign coaches their duties, and he would provide input on evaluations as well.

Q. And why did you send this message to Aaron Leavell?

A. Well, Aaron called me on Saturday morning, I believe, and he, well, based on Exhibit-3, had heard about Joe posting that he might be getting fired on Facebook and asked me what's going on, did I fire Mr. Barton and I said no, I have no idea what's going on.

And then I of course contacted [57] Mr. Barton, athletic director, and asked him if he knew what was going on, and he -- again, so this is through two or three people, he said Nate Gillam must have said that to him, I don't know. He says I didn't say that to him.

I just said we need to discontinue any practices that would be violating the Establishment Clause and board policy. So that's my response then is, Aaron was asking for some information about what had transpired and so I just gave him what my communication was, what I had done.

Q. You were concerned this would violate the Establishment Clause?

A. I was confident that it was in violation of the Establishment Clause if he had actually done what this coach alleged, which I wasn't a hundred percent sure it was even Joe Kennedy at the time. That was Mr. Barton projected that, and hence, obviously Joe acknowledged that it was him. So yeah, the inviting the other, that makes it school sponsored at that point.

Q. This email to Aaron Leavell was the first communication you had about the prayer situation; is that correct?

A. That, on this, yes, on this situation,

\* \* \*

[70] against him.”

Are you aware of any complaints made against him at that time?

A. No.

Q. And at this point, Dr. Leavell’s statements as far as you’re aware represented the position of the District at that point?

A. Yes.

Q. Is it fair to say at the point, at this point when these letters were sent, the District had decided to retain Coach Kennedy?

A. Yes.

Q. There were no plans to put him on leave at this point?

A. No.

Q. And I would remain in this position as an assistant coach of the football team?

A. At that point, yes.

Q. So I’d handed you earlier, Dr. Polm, the schedule, the 2015 season. I know it’s a number of years ago, but if you could let me know if you recall which games you attended between September 18th, which is the game against Olympic, and October 16th.

A. Okay. I attended the 18th with [71] Olympic. I’m sure I attended the Kingston game on the 2nd of October. I think. I’m not a hundred percent sure on that.

Q. Understood.

A. I might have been gone at a conference or something, I haven't checked back on calendars.

And I attended the 16th game with Centralia, and the Sequim game -- well, is that as far as you wanted to know or through the end of the season?

Q. Why don't you go through the end of the season.

A. I believe I was at the last, at the Sequim game on the 30th. I don't recall the Lindbergh or the Kingston games following that.

Q. What about the JV schedule? That should be Exhibit-5.

A. Normally there's only nine or ten games in the varsity schedule.

Q. Could those be playoff games?

A. Possible, yeah, it could be.

The JV schedule, I did not attend JV games, very rarely attended a JV game. If I did, it might have been a few minutes at the beginning of the game and then I was gone. Those were Monday nights [72] and typically didn't attend those.

Q. So you don't recall attending any of these games during the season, JV games?

A. I do not. I do not recall attending any of the JV games specifically. Again, they started at about 5:30. On the way home from work, I might have swung by and then left.

Q. So we just recently discussed those letters sent out September 22nd to Representatives Young and Caldier, and then we talked about your attendance at the games. Between September 18 and, say, October



15, did you hear any concerns from coaches or players during this time period regarding Coach Kennedy?

A. Can you repeat the question again?

Q. Between September 16 and October -- or September 18 and October 15th, did you hear any additional concerns or complaints about Coach Kennedy?

A. That's a very difficult question because Facebook was blowing up with thousands of comments, and I received, started to receive -- I received a lot of phone calls and email from people and hardcopy mail from people that were aware of the situation at some points.

[73] I don't remember all the dates in there when we started receiving those sorts of documents, but there was no formal complaint of any sort that I received on Mr. Kennedy.

Q. So following the letter stating that Coach Kennedy would be retained, leading up to, say, October 15, you received no complaints that would have changed your mind -- or scratch that.

Following September 18, you received no word concerning Coach Kennedy that would potentially change his status with Bremerton High School; is that correct?

A. That's correct, yeah. I recall after -- at some point after this event was moving through its process, that there was some families or some students who had expressed concern about being compelled to participate and -- but that was not something that was -- anybody was aware of at this time.

Q. When did you receive word about that?

A. I don't recall specifically. It was a parent that had come in concerned. His son played on the football team and his son had felt compelled to participate, because even though he was atheist, he felt he wouldn't get to play as much if he didn't [74] participate. He was like a [redacted] and he was like a [redacted], played a lot.

Q. You don't recall the date of that?

A. I don't recall the date of that. The father that came in was very upset and I just had to kind of interact with him on the spot.

Q. You mentioned families. This was the only incident?

A. That's the only one I really can recall, uh-huh, at least that I knew about.

MR. LANE: Let's take a quick break. We've gone for about another hour.

THE VIDEOGRAPHER: We're now going off the record. The time is 10:47 a.m.

(Brief recess.)

THE VIDEOGRAPHER: We're now back on the record. The time is 11:05 a.m.

(Exhibit-12 marked.)

Q. I'm handing you a letter marked Exhibit-12 dated October 23, 2015 to Coach Kennedy from Dr. Leavell. Take a second to familiarize yourself. Do you recognize this letter, Dr. Polm?

A. Yes.

Q. Do you recognize this as being a [75] response in part to the events of the October 16th game where Coach Kennedy knelt at midfield?

A. Yes, yes.

Q. And the District issued this letter, is it your understanding that the District issued this letter because it believed that Coach Kennedy was continuing to pray at midfield?

A. Yes.

Q. Had Coach Kennedy asked to be allowed to continue to pray at midfield?

A. I'm not sure what interactions occurred between Mr. Kennedy and Dr. Leavell, and when I conferred with him in delivering this letter, he was clear on what the expectations were and not clear on what his actions would be.

Q. The first paragraph of the first page of this letter references a September 17 letter. Are those the directives you were referencing?

A. Yes, uh-huh.

Q. And can you read the last sentence of that first paragraph?

A. "In general, I believe that you have attempted to comply with the guidance set forth in that letter."

Q. So your understanding is that the [76] District believed Coach Kennedy had been attempting to comply with the guidance?

A. My understanding is that he discontinued the locker room prayer that he had been leading, and that he discontinued inviting other teams and players to midfield to pray after the game. However, because this, again, had blown up on Facebook, we had

thousands of people saying they were going to attend and storm the field with him after the game.

So my interpretation was not as black and white as what you might have indicated. I think that he might have avoided some of the directives, but maintained actions that were public and overtly religious and certainly in violation of what our expectations were for him, for any district employee.

Q. So I know we just took a quick break -- or a break, but we're going to have to take another quick one because we're going to show you some videos so we need a second to set those up.

A. Okay.

THE VIDEOGRAPHER: We're now going off the record. The time is 11:10 a.m.

(Brief recess.)

THE VIDEOGRAPHER: We're now back on [77] the record. The time is 11:13.

MR. LANE: The next thing I want to show you is a video and I'm going to read the file name first for the court reporter. The file name is B19000500-[V3] 10.23.15-V\_North Mason. I apologize to the court reporter for the long file name.

(Exhibit-13 marked.)

Q. So this is what we're about to show you, Dr. Polm, is a video following the 10-23 game that's a varsity game at North Mason.

Before I show this video to you, we went through earlier the games you remember attending. Do you recollect if you attended this game?

A. I do not.

Q. Okay, and this is the letter we just went over, which was dated October 23, this is the game immediately following that letter. In fact, this game is actually the day of that letter.

A. This must be the away game, again not at Bremerton.

Q. At North Mason, correct.

MR. LANE: I think we're ready for the video.

(Video playing.)

[78] MR. LANE: Let's start it again.

Before we watch it too, I would note it is a little grainy, so we can rewind if necessary.

(Video playing.)

Q. As I mentioned, the video is a little grainy. Were you able to see the figure of Coach Kennedy kneeling?

A. I think at the end.

Q. Would it be helpful if we watched the video again?

A. No.

Q. Okay. You mentioned earlier in our discussion that there was a concern by the school of -- okay, actually, let's strike that.

Let's go on to another video and I will read it for the court reporter in a second, but this is going to be a video of the JV game at North Mason which is October 26.

A. It's going to be the JV game at Bremerton.

Q. Correct, thank you for that.

October 26th versus North Mason. The file name is B19000501-[V4] 10.26.15-JV\_North Mason.

(Exhibit-14 marked.)

MR. LANE: We'll enter that as an [79] exhibit as well.

This video is a little better quality, and as I mentioned, this is the October 26 game, a JV game at North Mason, and as you noted, against Bremerton.

(Video playing.)

MR. LANE: We'll go off the record to reset the camera.

THE VIDEOGRAPHER: We're now going off record. The time is 11:23 a.m.

(Brief recess.)

THE VIDEOGRAPHER: We're now back on the record. The time is 11:24 a.m.

Q. Dr. Polm, you just saw footage from the two games immediately following the October 23 letter. Would you agree that those videos depict Coach Kennedy engaging in prayer at the 50-yard line?

A. The first one is pretty grainy. I'm not sure where it was located on the field. It seemed like about the middle of the field. The second one is definitely, it was very clear, uh-huh.

Q. And that involved Coach Kennedy taking a knee down on the field; is that correct?

A. With several community people, Representative Jesse Young, et cetera.

[80] Q. Did you see any players with Coach Kennedy taking a knee?

A. Not during the first part. They came after. And what it appeared to me, interpreting the film, is a couple of players went over to the other team to invite them to join them in the middle of the field.

Q. When the players entered the field, Coach Kennedy was no longer on his knee; is that correct?

A. When the players entered the field, he was no longer on his knee, that's correct. There were some other adults standing around here.

He's a head coach of that team, by the way, and not the assistant, so he was not with his team.

Q. But again, to my question, there are no players kneeling with Coach Kennedy?

A. Correct, during that moment, uh-huh.

Q. Did you see any evidence of unauthorized individuals accessing the field in those videos?

A. Yes.

Q. You did, who?

A. Jesse Young. That's the only person I [81] really recognized. There was several community members that didn't appear to be staff members that accessed the field.

Q. You mentioned previously a large amount of individuals in the stands accessing the field. Did you witness that?

A. In previous games, yes.

Q. In these videos?

A. No, not in those two videos. I witnessed, again, the North Mason team, I know that the head coach,

Jeff Bevers, had instructed his team not to join the team on midfield.

Q. Did you witness any injuries?

A. No.

Q. Any injuries resulting from individuals storming the field?

A. Not in the two videos you showed me.

Q. You had witnessed that previously?

A. I had witnessed people storming the field and I was concerned about injury.

Q. But you did not witness any injuries?

A. Well, I saw people trip over the rope that we had as a barrier.

Q. You described Coach Kennedy's prayers as starting a spectacle. I believe you used the word [82] "spectacle"; is that correct?

A. That would be an acceptable word, I would say, yes. It's definitely a show that people were interested in watching and participating in.

Q. You described him taking a knee in these two videos. Would you describe what you just witnessed as a spectacle?

A. In the away game at North Mason and the JV game you showed me, no, I would not say it was a spectacle in those events. But definitely a show of religion in the second one, for sure.

Q. Do you know roughly how long Coach Kennedy was on his knee in the first video?

A. It looked like about a minute maybe, less, very quick. It appeared in the first video.



Q. The first video?

A. It appeared to be a cell phone video or something like that, very grainy.

Q. Less than a minute?

A. Very short, yeah. I didn't time it.

Q. Do you have an estimate how long he took a knee in the second video?

A. No.

Q. You have no estimate?

A. It's got a timer on it. I'm sure you [83] can actually time it out. So I don't know how long it was.

Q. Was it less than a minute?

A. I'm not sure.

Q. You're not sure?

A. I'm not sure. I'd need to see the video again to count the seconds if you wanted to do that.

Q. Yeah, let's watch it again. Off the record briefly.

THE VIDEOGRAPHER: We're now going off record. The time is 11:28 a.m.

(Discussion off the record.)

THE VIDEOGRAPHER: We're now back on record. The time is 11:31 a.m.

Q. Dr. Polm, we're going to watch the video one more time. This is the October 26 game against North Mason, the junior varsity game, which is at Bremerton. It's a long video, so we're just going to watch it until shortly after Coach Kennedy rises from his knee so we don't have to watch the full length.

A. Okay.

Q. Ready? And if you would, please, time it, in your mind.

[84] (Video playing.)

MR. LANE: Off the record.

THE VIDEOGRAPHER: We're now going off record. The time is 11:33 a.m.

(Discussion off the record.)

THE VIDEOGRAPHER: We're now back on the record. The time is 11:34 a.m.

Q. So Dr. Polm, we just finished watching again the October 26 footage from the North Mason game at Bremerton. Did you get a chance to time roughly how long Coach Kennedy was on his knee?

A. Yes, I did.

Q. How long would you say approximately that was?

A. Approximately 15 seconds.

Q. Okay, thank you.

(Exhibit-15 marked.)

Q. I've just handed you an email, Dr. Polm, from Patty Glaser to yourself and Jeff Ganson, and it says, "Signed letter to Joe."

There's an attachment if you look on the other side. I'll let you familiarize yourself with that letter.

Have you seen this letter before, Dr. Polm?

[85] A. Yes.

Q. Is it correct to say that this is the letter notifying Coach Kennedy that his employment status would be changing with the District?

A. No. I think it's just putting him on administrative leave.

Q. Notifying him that he's on leave?

A. That's what I understand.

Q. This letter is dated October 28. That's two days after the date of the last video we watched, correct?

A. Yes.

Q. Would you agree that this letter is in response to the conduct we witnessed in those two videos?

A. Yes.

Q. And this letter is the District's response to that conduct; is that correct?

A. Correct.

Q. Ultimately from Superintendent Leavell, correct?

A. That is correct.

(Exhibit-16 marked.)

Q. Dr. Polm, I've just handed you Exhibit-16, which is an email from you to Aaron

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**Transcript Excerpts From Deposition of  
D. Boynton (July 12, 2019)**

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[54] A. The first game, the Sequim game? It was the last regular season game of 2015.

Q. Was that a varsity game?

A. Yes. So I'm guessing if --

Q. Would that be October 30th?

A. Yeah, that would be my guess, because the JV game against Sequim was on the 2nd, which would have been a Monday. So it would have been the 1st, 31st, and 30th, yeah, Friday the 30th.

Q. And following that game, you performed a Buddhist chant on the 50-yard line?

A. Yeah, I also took a picture of the scoreboard. I even asked permission from Coach Barton to do it because everybody was pretty much off the field by that point and heading up to the locker room. It was just my moment to reflect. We made the playoffs. It was my first year, second year as an offensive coordinator. We had a very young quarterback. It had been a very long season.

And I just went out to take a picture of it, and kind of just reflected in the moment, you know, and so yeah, I said the Buddhist chant to myself quietly, kind of, you know, just my way of -- you know, like I said, I took a picture of the scoreboard, took a deep breath, quietly chanted to [55] myself, a lot of emotions running through my head.

I developed some close relationships with some of the players, you know, so it was -- and some of them

were seniors that were going to be moving on, and I just wanted to kind of gather myself before I went back to the locker room, and then we got ready to go off into the playoff game. I can't remember who we played in the playoff game, but I know it was at South Kitsap the following Friday or Saturday.

Q. You asked Jeff Barton permission to go onto the 50-yard line to do the Buddhist chant?

A. Yeah, because at this particular point in time, they had extra security and the whole area was kind of roped off to keep the swarms from going down onto the field, because there was rumors there was going to be swarms of people going down on the field after that game because it was our last home game. So there was extra law enforcement officers were there. There was extra, you know school staff members were there.

So after everybody cleared the field, both teams, everybody was pretty much gone, I was kind of the last one coming up, and I just asked Barton if it was okay if I go out there and take a [56] picture of the scoreboard, and he said yeah. And I just took my own personal few moments after that and probably if I was total 30 seconds out there, that would probably be the longest.

Q. Mr. Boynton, can we get a copy of that photograph that you took at the 50-yard line?

A. Of the scoreboard?

Q. Yes, sir.

A. Well, I would say yes, but the problem is it was on the phone that was given to me by the department, and about three years ago, that phone ended up in a swimming pool in my pocket when I had to go pull my

granddaughter up out of the water, who was two years old, and it got ruined and has since been kind of tossed. So we lost it all and that's how that happened. I got a nasty-gram in my file at work and told not to do that again.

Q. Mr. Boynton, thank you very much for your time. That's all we have for you today.

A. Okay.

#### EXAMINATION

BY MR. TIERNEY:

Q. Mr. Boynton, I think I have just one question. When you went onto the field to take the [57] picture of the scoreboard and then you did this chant to yourself, do you believe you were giving any visual indication to anyone around you that you were doing a Buddhist chant to yourself?

A. No. It looked like a guy standing out in the middle of the field taking a picture of the scoreboard and staring off at it afterward. That was about it.

Q. No further --

A. I didn't say it out loud. I didn't kneel. I didn't, you know, fold my hands. Didn't do any of those sort of things.

Q. Where were the players at the time you were doing this?

A. They were probably just leaving the gate, crossing the practice field, heading to the locker room.

Q. So how far away would you say the nearest one was?

A. Oh, a hundred yards.

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MR. TIERNEY: Okay. That's all the questions I have.

MR. FITZPATRICK: I have nothing further.

\* \* \*

**Transcript Excerpts From Deposition of  
N. Gillam (Aug. 8, 2019)**

\* \* \*

[108] A. Okay.

Q. It appears to be your coaching evaluation form for Mr. Kennedy dated November 12, 2015?

A. Okay.

Q. Go ahead and review that document if you need to. I've got a few questions about it.

A. I've reviewed it.

Q. Is this one of the documents you reviewed ahead of this deposition?

A. Yes.

Q. Do you remember specifically filling out this form?

A. Specifically? Not necessarily, but I mean, I did them for every staff member. This, like I said at the beginning, I testified earlier, even though the word "evaluation" in the title, it's not really an evaluation. It's a tool that I use to help my coaches kind of grow, kind of understand so we can kind of all proverbially be on the same page.

It's something that I had created that's just a sliding scale with some general comments on it. But again, it has no bearing or authority, if you will, on any sort of hiring or [109] firing. I'm not even sure, quite frankly, that it was given to Joe. I gave it to Jeff Barton. That was it.

Q. Did you have any conversations with Mr. Barton about whether you needed to fill out an evaluation or not?



A. I did.

Q. Did Mr. Barton tell you to go ahead and fill one out for Joe?

A. No, quite the opposite. He said that he would fill out the evaluation for Joe.

Q. Okay. You went ahead and did your usual evaluation form here for Joe?

A. Yes. And I don't know the dates. I intended to do the evaluation as I normally had done, and then Barton said just for sake of, you know, whatever, because I had resigned at this point, I'll just do it.

Q. At the bottom where it says, "Recommendations," I think kind of consistent with what your testimony has been, "Defer to BSD pending litigation," right?

A. Right.

Q. In your view, this was totally in the District's hands?

[110] A. 100 percent, yeah. This evaluation form has no bearing from a -- I mean, I don't even know, I don't normally even give it to the athletic director. I'm not sure, again, I don't know if I gave it to him because I said -- because he said he was going to do it and so then I gave it to him. Normally it's between me and the coach, and then I file them away.

Q. I just want to talk about a couple of the comments that you left on here.

A. Sure.

Q. So I think it's fair to say that the comments in the first four boxes where you say, for example, on item 4, I think that says 4/5?

A. Yes.

Q. "Coach Kennedy put himself before the team many times this season."

Item 7, "Coach Kennedy's actions in this season drove a wedge in our coaching staff"?

A. Yes.

Q. Am I reading that right?

A. Yes.

Q. "Coach Kennedy's actions cast our program in a poor light in the community"?

A. Uh-huh.

\* \* \*

[112] with his praying, you're taking two separate issues and pushing them together, and I'm separating those two issues. His choice to pray is his choice to pray, but the timing of him choosing to pray is what the issue was.

Q. So I think I understand. You're saying not the fact that he chose to pray, but the time and manner in which he did it?

A. Correct.

Q. And continued to do it even after being told not to?

A. Again, that's on the District. This has to do with the players, this is about the team. He chose to put himself before the team on homecoming, senior night, et cetera.

Q. Senior night, which game was that?

A. I believe it was Sequim.

Q. The Sequim, the last game of the season?

A. Yes.

Q. And Coach Kennedy was not a coach at that point in time?

A. According to the document, no.

MR. ANDERSON: Let's take a quick break. I think I'm just about done.

\* \* \*

**Transcript Excerpts From Deposition of  
J. Barton (Aug. 8, 2019)**

\* \* \*

[34] Q. So what other sports are going on in the fall during football season?

A. Girls swimming, girls soccer, boys tennis, cross country, boys and girls. I think I'm missing one, but I don't think so. But football of course.

Q. Several different sports were going on too?

A. Several different sports, yes.

Q. And so you would of course be relying on Coach Gillam and his assistant coaching staff to operate the football program?

A. Yes.

Q. You also mentioned you would try to attend home sporting games; is that right?

A. That was my top priority, home events.

Q. Would you usually attend home football games as well?

A. Oh, yes.

Q. Would you stay for the full game?

A. As much as possible. I had other duties and responsibilities too.

Q. What other duties and responses are you referring to?

A. Home football games, there's money [35] involved because we sell tickets, and so I would oversee the money and the ticket takers and the counting of the money. That was generally during the

fourth quarter, so I wasn't always down at the game during that time.

Q. When you would attend a football game, would you watch from the stands or where would you be located physically?

A. I move around a lot. I like to see from different angles. I would generally walk around the stadium. I wouldn't be in any one place.

Q. When you say, "walk around the stadium," would that include being in the stands, or were you usually in the field or the track area?

A. More the track area and the field, or we have an upper bowl area, I would be up there sometimes too, but not in the stands necessarily, no.

Q. Were you at all yourself involved in making specific assignments to the head coach or the assistant coaches as far as what their specific responsibilities were at the games?

A. No.

Q. About how many people roughly on average attend a home football game?

A. That's a great question.

[36] Q. If you know.

A. I don't know the total number, to be honest. Quite a few.

Q. A few hundred than?

A. More than a few hundred, yes.

Q. A thousand?

A. Maybe on bigger games, big rivalry games, a thousand.

Q. Would you usually have some sort of media in attendance for football games?

A. Not normally.

Q. Not normally?

A. Other than maybe school media, school photographs, school-related media aspects, but no outside media.

Q. You would never have like a local news channel there to interview the coaches after the game?

A. There was a time when we had really good teams, there might be a night where once in a while they might come and view. But on a given Friday night, generally speaking, not usually, no.

Q. So if there was a high profile game, whether it being the playoffs or because the team was doing well, sometimes there may be some media [37] coverage?

A. There might, yeah.

Q. Was there a specific area where you would designate for members of the media to observe the game from?

A. Well, number one, they couldn't be on the field and interfere with the game itself, so they had to be off the field and back a ways, behind the fence generally.

Q. Is there a fence around the track or around the field?

A. The track surrounds the field and then there's a fence. It separates the stands and the outer area of the bowl from the track and the football field.

Q. So it goes stands, then fence, then track, then field?

A. Yes.

Q. Okay, and did you usually stick around the field area after football games, or were you back taking -- doing sort of the ticket counting that you were talking about earlier?

A. Generally I was up in the building doing my other responsibilities and duties.

Q. Do you know whether after football

\* \* \*

[59] Q. Go ahead and review Exhibit-10, Mr. Barton. This is probably not an email you've seen before. It's not addressed to you. It's from Dr. Leavell to the school board members, but let me know when you're done reviewing it.

A. I'm done.

Q. Dr. Leavell writes here, "I am pleased to inform you that Coach Kennedy did not lead his team in prayer tonight, but rather, led a great post-game motivational speech. There was an above average crowd at the game, but not overwhelming as we expected. The post-game gathering was conducted well and did not last that long."

Do you see that?

A. I do.

Q. You don't have any reason to dispute Dr. Leavell's report to the school board members here?

A. No.

Q. Were you present on the field to observe in post-game motivational speech that took place after the Olympic game?

A. I don't believe I was, because I think I was still upstairs up in the building taking care of moneys.

[60] Q. From your perspective at this point in time, you didn't have any further concerns about Mr. Kennedy's actions?

A. I didn't, no.

MR. ANDERSON: Let's go ahead and take quick break.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: This marks the end of disk number 1. The time is 3:06 p.m. We're going off the record.

(Brief recess.)

THE VIDEOGRAPHER: We're back on the record at 3:18 p.m. This is the beginning of disk number 2.

Q. Mr. Barton, we were just talking about both the Klahowya football game on September 11 and also the Olympic game on September 18. Do you remember that?

A. Yes, I do.

Q. Looking back at the Klahowya game, which was the game that after which Mr. Kennedy made the Facebook post that led to the explosion in calls and emails and all of that, did you speak with Mr. Kennedy prior to that game yourself?

A. Not prior to the game myself, no.

\* \* \*

[62] nonmeeting but conversations with him about the prayer situation?



A. No.

Q. The next football game after the Olympic game was an away game at Port Angeles, a varsity football game, excuse me. Do you see that on the schedule?

A. Yes.

Q. Do you remember anything in particular about that away game at Port Angeles?

A. No, I don't.

Q. Do you remember going to that game at all? A. I don't remember if I went or not.

Q. Do you remember receiving any particular complaints about Coach Kennedy relating to that game?

A. No, not that I recall.

Q. What about the JV game against Port Angeles the next Monday on the 28th, do you recall receiving any concerns or hearing any concerns about Coach Kennedy's conduct at that particular game?

A. Not that I can recall, no.

Q. The next varsity game was, it looks like October 2 game against Kingston. Do you see [63] that one?

A. I do.

Q. Same question, do you remember attending that game or anything specific about that game?

A. I don't recall any specifics, but I know I was there.

Q. And how do you know you were there?

A. Because I was at all the home games that season.

Q. And in regards to the October 2nd game, against Kingston at home, did you remember -- do you remember any specific complaints about Coach Kennedy, Coach Kennedy's conduct at that game?

A. Not that I can recall.

Q. Same answer for the JV game at Kingston on October 5th, the next Monday?

A. Not that I can recall.

Q. The next varsity game was a game at North Kitsap. Do you see that, on October 9th, it looks like?

A. I do.

Q. Same question, do you remember attending that question?

A. I think I did, but I don't -- I can't [64] be certain, but I believe I did.

Q. Do you remember receiving any complaints about Coach Kennedy's conduct at the North Kitsap game, varsity game?

A. Not specifically, no, at that time.

Q. Do you recall for the three prior varsity games we just discussed, North Kitsap, Kingston and Port Angeles, whether you ever went down onto the field to listen to or observe any post-game gathering?

A. I don't remember -- the Kingston one, I believe I was up in the school still because it was a home game. The North Kitsap one, I don't recall if I went down on the field or not. I know I was probably close to the field, if I was there, because of the way the stadium is set up.

Q. But you don't have any recollection of anything particularly unusual occurring on the field at those games?

A. No, I don't recall.

Q. What about the junior varsity game against North Mason on October 7, do you remember anything unusual about that game?

A. No.

Q. Do you remember attending that game? [65] It appears to be a home game according to this schedule.

A. I probably was out there for a while, but I don't usually stay all the -- the total game for the JV game, no.

Q. You don't remember ever going down to the field after that game to see what, if anything, Coach Kennedy was doing?

A. No, I don't recall that.

Q. Do you remember receiving any complaints or any concerns about Coach Kennedy's conduct at that game?

A. No.

Q. Same question for the junior varsity game reported here on October 12 against North Kitsap?

A. I don't recall any.

Q. No specific recollection of that game?

A. No, I don't.

Q. No specific recollection of receiving any complaints about Coach Kennedy relating to that game?

A. No.

JA 260

Q. No specific recollection of Mr. Kennedy's  
conduct after that game on the field,

\* \* \*

**Transcript Excerpts From Deposition of  
J. Kennedy (Aug. 9, 2019)**

\* \* \*

[10] A. All right, sir.

Q. The -- if you turn to Exhibit 4. On a paragraph numbered 16, this begins several paragraphs where you talk about your practice of prayer prior to this controversy arising. So I'd like you to just read to yourself the paragraphs 16 through paragraph 19.

A. Yes, sir.

Q. You describe in those paragraphs starting out praying alone on the field after games, correct?

A. Yes.

Q. And then after a while, some players began to join you, correct?

A. Yes, sir.

Q. And then in paragraph 19, you say, "Eventually I began giving short motivational speeches to the players after the game." Do you see that?

A. Yes, sir.

Q. Roughly how long into your career were you when you began giving those short motivational speeches to the players after the game?

A. I --

Q. And I mean just roughly. You know, is it a season or two or five years, or just some kind of rough ballpark?

A. I would say sometime during 2008 season, my first

\* \* \*

[14] A. Yes, sir.

Q. How did you know about that, that that predated your involvement?

A. I asked the other coaches about it.

Q. And -- and some of the coaches told you that there were previously prayers in the locker room?

A. Yes.

Q. And who -- which coaches told you that?

A. I know Nick Gillam, Coach Boynton, and it was confirmed by Derrick Salisbury, Mike Turiso [phonetically], all the way back to when they were playing football back in the '90s.

Q. Okay.

(Exhibit Nos. 5-7 marked for identification.)

Q. (BY MR. TIERNEY) Okay, Mr. Kennedy, the court reporter has handed you what have been marked Exhibits 5, 6 and 7. And I'd like to go through these.

MR. TIERNEY: Well, first, for the record, these don't have an index stamp number on them, but, Counsel, we -- we pulled these off of the production and Exhibit 5 is, if you want the number for it, is B19000488 and Exhibit 6 is B19000486 and Exhibit 7 is B19000485.

MR. ANDERSON: Thank you.

MR. TIERNEY: You're welcome.

[15] Q. (BY MR. TIERNEY) So on Exhibit 5, let's start with that. Can you identify, can you see anything in here that tells us what game or what season this is where this is taking place?

A. No. I was really looking to see which stadium this is and I cannot item. I don't even recognize that uniform from number 2.

Q. Could he possibly be a player on another team?

A. Oh, he -- he is one from another team, yes.

Q. So just -- is this an example of your post-game talk and prayer with the players present?

A. Yes. Earlier in the -- in the seasons, yes.

Q. Is there anything about this that tells you whether this took place in the 2015 season or not? And you could look at the schedule to see.

A. Oh, yes, it's before 2015 because the coach in the background is Coach Turiso and he was not there in 2015.

Q. Okay. You anticipated my question. I was going to ask --

A. Oh, sorry.

Q. No, that's great. I appreciate it. I was going to ask you who that is there on the -- on the right side of the picture. So that's Coach Turiso?

A. No, sir. The one to the right, that is Nick [16] Gillam, the head coach.

Q. Okay.

A. And then one in the background by the bleacher or the little seat, that is Mike Turiso.

Q. I gotcha. Okay. And most of the players and Coach Gillam had their heads bowed. Does it appear to you that this is taken as you're delivering your prayer?

A. Yes, sir. Black Hills. I think I recognize this as Black Hills. It's an away game.

Q. Where is Black Hills?

A. Down by --

Q. Is that the name of a high school or a community? I don't recognize the name.

A. Yeah, it's right outside of Olympia. They split from the other school. I can't what -- not Centralia. Capital maybe. One of those.

Q. Uh-huh, okay. Yeah, I think it's capital. Okay. Thank you. Okay. If we could look at Exhibit 6 then, I'd like to ask you if you could -- I'd like you to identify, if you could, what season or game this is if it's possible for you.

A. Without the clarity, I -- I can't make out who is who. I have no idea.

Q. You can see the other team in the background there?

[17] A. Yes, sir.

Q. They're just blue and white. There's a bunch of blue and white teams I assume?

A. There is. Not with the white helmets on that. I'm not sure who that is.

Q. Okay. And can you tell from this picture whether this is taken at the time when you are delivering your prayer to the -- to the surrounding people?

A. Yes, sir.

Q. It is?

A. Yes, sir.



Q. I mean, that's when it's being taken? That's what it looks like to you?

A. Yes, sir.

Q. Okay. And now you're -- in Exhibit 6, you're standing as you make your prayer, correct?

A. Yes, sir. In this photo, yes.

Q. And in Exhibit 5, you're standing as you make your prayer, correct?

A. Yes, sir.

Q. Okay. And then if you could turn to Exhibit 7 for me, my first question is whether you can identify what game or season this is. Is there anything about it that you recognize, a player or something like that?

A. Yes, sir. This is -- I believe it's 2013. I see [18] [redacted] [phonetically] and a couple other players. I can't remember if they were graduating in '13 or '14.

Q. Okay.

A. And it's against Olympic.

Q. Olympic. Okay. That would be the dark blue uniform there?

A. Yes, sir.

Q. These are mostly your players but there's -- it looks like there's a couple of dark blue uniforms in there as well?

A. Yes, sir, and one of our coaches.

Q. Where is your -- oh, the coach on the far -- is that on the far right there?

A. Yes, sir, in the black.

Q. Who is that?

A. That is Coach Nielsen.

Q. What's Mr. Nielsen's first name if you remember?

A. Coach -- I don't.

Q. His first name's coach, right? Like everybody else, right?

A. Yes, sir. I don't remember.

Q. It looks -- I can see one helmet clearly, but it looks like you're holding two helmets up there?

A. Yes, sir.

Q. Is that accurate?

[19] A. Yes, sir.

Q. And I recall reading that that was sometimes a practice of yours where you would hold up a helmet from each team and -- and as you gave your speech and as you made your prayer?

A. Yes, sir. As the other teams started joining, I lifted them both up.

Q. And can you tell if this picture is being taken as you're delivering -- does it look to you as if this is being taken as you're delivering your prayer?

A. Yes, it does, sir.

Q. And in this instance, you're standing and holding helmets up as you're delivering your prayer, correct?

A. Yes, sir.

Q. And can you tell what stadium this is? Does it look like the Bremerton stadium to you?

A. No. This is Olympic.

Q. Okay.

A. Because it's turf and -- and the Silverdale stadium -- it's away game.

Q. And in Exhibit 6, can you tell what stadium that's in?

A. 6, this is a home game. This is at Bremerton.

Q. And in Exhibit 5, can you tell what stadium that is?

[20] A. I'm assuming this one is -- since the uniform, I believe it's Black Hills; away game.

Q. Okay.

A. And the turf.

Q. Where do they play their games, do you know?

A. I -- you know, somewhere -- somewhere down by Olympia.

Q. Okay. If you would turn to Exhibit 3 then and look at the -- read to yourself the second paragraph on the first page.

A. Yes, sir.

Q. Does this paragraph accurately describe your practice of prayer with the team after the games prior to this controversy arising?

A. Let me reread it one more time.

Could you ask that question again?

Q. Does this paragraph -- is there anything in this paragraph that you disagree with?

A. Yes, sir. Where it says "Students from both Bremerton High School and the opposing team, along with coaches from the opposing team and sometimes other attendees of the game, are invited to participate

in this activity.” I would not invite them to -- to join the activity.

Q. Would other -- would players invite them to join [21] the activity?

A. Sometimes my -- my team captains or one of the other players would -- would do that.

Q. Okay. So they were invited but not by you?

A. Right. I -- I would invite a coach, if I knew him that we -- just the coach.

Q. Did you know that your players would occasionally invite players from another team?

A. Yes, sir.

Q. Is there anything else in the second paragraph of the first page of Exhibit 3 that you disagree with?

A. I honestly don't know what my talks included. Overtly religious references, I don't know what that really means.

Q. Was it clear in your talks that you were saying a prayer?

A. Yes, sir.

Q. And did you acknowledge to the District that your -- where it says that they likely constitute prayer, is that's something you acknowledged to the District?

A. Yes, sir.

Q. Okay. Is there anything else in that paragraph that you disagree with?

A. No, sir.

Q. And then if you could turn to the last page in

\* \* \*

[23] A. Yes. The Cleveland game on September 4th.

Q. None of the players came out to join you?

A. No they did not.

Q. And were there any others where you prayed alone after the -- after that Cleveland game? And again, I'm limiting that to before the controversy arose.

A. Do you have the date of when every -- when that controversy started?

Q. Well, it was pretty close in time to this -- that September 17 letter. And I just, for the moment, will be saying it was around the September 11.

A. Okay

Q. Somewhere around there. But we'll pursue that in a little bit more if the specific date makes a difference to you.

A. Right. Cleveland's the only one I know, but I don't remember the Sequim game, if they did or not.

Q. Okay. What I'd like to do, have you do, is just tell me in your own words how this started from your point view, the controversy over your prayers with the team?

A. Where would you like me to start, sir?

Q. Just where you think the start is.

A. I would say it started when I walked into the locker room before the Klahowya game on the -- on the 11th. And when I walked into the coach's office, the coaches were [24] like, Oh great, Kennedy. You got us in trouble.

And I said, "I just got here, What could I have possibly done?"

And he said, "Barton was just in here." He's the athletic director. "Barton was just in here. And he said that Polm, the principal, was asking about the prayer and said that you couldn't do it anymore." And so we started talking, the coaches and myself were talking about it.

I said, "This is America. The Constitution. You know, I have the right to freedom of speech." And we've had pretty good conversation about it. And I said, "What's the worst thing that they could do to me?"

And one of our coaches, Daniel Peete, he's an attorney and he said, "Well, they could fire you," and it kind of got serious. So from there, we went to the game and Jeff Barton approached me and he -- right after the game -- it was a double overtime.

And he said, "Are we clear about" -- "about the prayer thing?"

And I said, "No, I'm not clear about the prayer thing." And-- but it was double overtime so when the game was over, there was the other teams trying to get on. It was a double header so it was completely packed of both -- both fans.

So Barton was like, "Looked like we dodged a [25] bullet there."

And I said, "Yeah, God works in mysterious ways." As we walked across the field, I talked to the -- thanked the other team, started talking to the other coach about Mondays game for the JV.

And as I was doing that, Olympic came over and - or I'm sorry, Klahowya came over and one of the kids kneeled in front of me, handed me his helmet and said, "Coach, would you use this in the prayer?"

And I said, "Absolutely." And Barton was just like, awe and walked off. So I had an inkling that something was wrong there. He didn't like it. And then when I was done doing the prayer, I turned around and I saw Coach Boynton and Coach Gillam and Boynton was shaking his head and Nate Gillam he mouthed to me, "They're going to fire you." And I had a sickening, you know -- you know, pit in my stomach. It was -- so I knew something was up.

And we didn't talk about it, but on the bus, I did a Facebook post that said I think I just might have been fired for praying. And the next day started getting phone calls from everywhere and my phone blew up, so I knew something was up.

Q. Okay. When you say Gillam mouthed, "They're going to fire you," did he -- were you close enough to hear him say that?

\* \* \*

[27] Q. Well, you said something about the Olympic team.

A. It was at Olympic stadium. It's Klahowya.

Q. Okay. And I thought you were saying that because it was overtime, there was another game coming on?

A. Yes. Olympic was playing against CK Battle, Battle of Bucklin Hill.

Q. Okay. And I thought you were saying that the Olympic team had already started to take the field.

A. They did. They were coming on to do their pregame warmups.

Q. Okay. So you were out at the field. And -- and is what you're saying that in essence, you conducted the familiar prayer with players from both teams present?

A. Yes, sir.

Q. And you held up a helmet from both teams?

A. Yes, I did.

Q. And you stood in the circle and you -- you said some form of verbal prayer so that the kids could hear?

A. Yes, sir.

Q. Did any of the coaches on either team join you?

A. I know there was one of the guys from Olympic, but I don't know about any of ours. I didn't really pay attention to who's -- who comes out and who doesn't.

Q. Other than the players and possibly the Klahowya -- Klahowya coach, did anybody else, any

\* \* \*

[38] A. Yes, I did.

Q. Did the other team join you?

A. I believe they did. A lot of the JV -- more of the JV teams did, yes.

Q. And then at some point in there, you had other conversations with District people; is that correct?

A. Yes, sir.

Q. Did you talk with the District lawyer Jeff Ganson?



A. Yes, I did.

Q. Tell me what happened in that conversation.

A. They were -- said that they were performing an investigation. It was Garth and Ganson, so I met them in a room. They asked me what happened. I told them. They had a bunch of questions. I answered them the best I could.

Q. And so was there a school board meeting right in that time that you attended?

A. It was either that week or the next week. I don't remember when it was, but yes, there was a board meeting.

Q. Okay. And in -- in these -- the course of the investigation, did Dr. Leavell make it clear to you that -- the District believed that -- that you shouldn't be conducting your post-game prayer with the -- with the players?

[39] A. Yes, sir.

Q. And did he ask you to stop doing that?

A. Not directly, but made it very clear what the expectation of the school was.

Q. And did you agree to stop the post-game prayers?

A. Yes, I did.

Q. And the next game, whatever that would have been, looks like it was Olympic on the September 18, at that Olympic game, you didn't pray immediately after the game on the field; is that correct?

A. That is correct.

Q. The -- if you could go back to Exhibit 4.

MR. ANDERSON: The declaration?

Q. (BY MR. TIERNEY) The declaration, yeah.

A. Got it. Sorry.

Q. I'd like you to turn to page 5 and look at paragraphs 29 and 30.

A. 29 and 30?

Q. Yes, please.

A. Yes, sir.

Q. It says that you -- you didn't pray on the field and then after the -- the game, you did a -- you did a speech with the players but you did not pray during that speech, correct?

A. That is correct.

[40] Q. And then you left after -- presumably after the players had been dismissed, correct?

A. Yes, sir.

Q. And then on your drive home, you turned around and went back to the field?

A. Yes, sir.

Q. Did it occur to you to go just directly to the field and pray before you got in your car to go home?

A. No.

Q. Was there still people there when you left the - the locker room and went and headed home for the first time?

A. At the school or in the stadium?

Q. In the stadium.

A. Oh, yes, there was.

Q. So how long does it take after the -- you get the players back to the locker room, how long -- how long does it take before the coaches are free to go?

A. Two, maybe three hours.

Q. So it takes them that long to get out of the locker room?

A. The players or the coaches?

Q. The players. First of all, the players.

A. Oh, no. The players, maybe up to an hour.

Q. Okay. And the coaches stick around for another [41] couple of hours?

A. Some of us do, yes.

Q. And what are you doing in that period of time?

A. We're talking about the game, what we could have done better. Talking about what's going to happen over the next day because we have practices and I have to set up my JV team, so I need to know who's eligible. We review film. We start breaking it down, uploading it. We do laundry, gear check. That's pretty much it.

Q. So your typical workday as a coach on a game day doesn't end until how many hours after the final whistle, would you say?

A. Are you talking about mine or every coach?

Q. Yours.

A. Mine -- ask that again.

Q. How long does your typical workday last after the final whistle?

A. As a coach?

Q. As a coach, yeah.

A. I don't know how to answer that. After the kids leave and all the other coaches go home, I -- I don't know if I'm technically still on the clock. I mean, I'm there. I'm talking with the other coaches.

Q. Okay. You lost me a little on that answer. You said after all the other coaches leave, you're technically [42] still there talking to the other coaches.

A. Right. I don't look at it as a job and being employed. When -- we're coaching when the kids are there. When the kids aren't there, we're not really coaching but we could be at the school. I mean, I never stop being a coach. I'm coach 24/7. So...

Q. Okay. Let me be clearer on it then, and I appreciate you trying to make a distinction. How long after the final whistle are you doing football coaching functions?

A. I personally until the last kid leaves, traditionally after I -- I don't know, hour after that.

Q. And do the other coaches also stick around during that period of time or do some of them leave as soon as the last player leaves?

A. Oh, actually, some of them leave directly from the field.

Q. The paid coaches or the volunteer coaches?

A. Some of them, yes.

Q. And is that something they work out with the head coach as to when they're -- who's going to leave and who's going to stick around?

A. Well, it's all of us. It's not just the head coach because we cover each other all the time. If -- we just

want to make sure we all pass the word and everybody [43] knows what everybody else is doing.

Q. So there's enough people to cover for somebody if they're --

A. Yes.

Q. -- or take care -- I'm sorry. Let me finish, please. That's okay. So there are enough coaches available so that if somebody had to leave early or take care of something in the post-game period, that they could cover for that person?

A. Yes, sir.

Q. So theoretically, once the players got back to the locker room, could you have turned around at that point and gone down to the field and said a prayer on the field?

A. For a home game?

Q. Yeah.

A. Yes, I could.

Q. And then turned -- then turned back and gone to the locker room and joined the players in the locker room? Could you have done that?

A. I could.

Q. How long would that have taken if you walked with the players up until the last player got in the locker room and then you went back to the field, said your prayer and then went back to the locker room? How long do you think that would take?

[44] A. Five minutes tops.

Q. And I had asked you before how long there were still people down, around and in the stadium

after the final -- let's say after the final whistle, and you said several -- that there still were people there several hours later?

A. At that game, yes.

Q. At which game?

A. The Olympic game.

Q. Okay. And is there something special about that game that people stuck around longer?

A. There was a bunch of media and a bunch of people came onto the field and there were people still in the stands and kids playing around and camera crews were there until after 11:00 P.M.

Q. And so when you came back in your car after leaving the locker room, there were still people on the field?

A. No, not on the field. They were up -- couple of the kids were playing around up in the stands.

Q. Okay. And I think you said in paragraph 30, "I turned my car around and went back to the field where I waited until everyone else had left the stadium;" is that correct?

A. Yes, sir.

[45] Q. How long did you have to wait before everyone had left the stadium?

A. As I recall about 10 or 15 minutes before they cleared out.

Q. Why did you wait until everybody had left the stadium?

A. I needed a moment alone with God and I didn't want anybody to be there.

Q. So you didn't want to be seen praying on the field?

A. I didn't want to be seen at all.

Q. Prior to the controversy arising, how long would it typically be after a home game, after the final whistle of a home game before the stadium has cleared out?

A. I'd say within the hour.

Q. Okay.

MR. ANDERSON: Michael, we've been going about an hour, why don't we take a break.

MR. TIERNEY: You're right. You're right.

THE VIDEOGRAPHER: The time is -- the time is 10:52 A.M. We're now going off the record.

(Off the record from 10:52 to 11:06 A.M.)

THE VIDEOGRAPHER: The time is 11:06 A.M. We're now back on the record.

[46] Q. (BY MR. TIERNEY) From when -- I'm addressing the post-game active -- movements of the team after a typical home game. How long would it take from when you tell the players it's time to head to the locker room until you actually got them up into the locker room?

A. For a home game?

Q. Yeah.

A. Two, three minutes.

Q. They would respond that quick when you said, Okay guys, time to head to the locker room?

A. Oh, I thought you meant from walking. From when -- I would say -- not much more than that; five minutes.

Q. Okay. Once you got them herded together and they started moving, it was only about two, three minutes to actually -- for them to cover the distance from the locker room and go in?

A. Yes, sir.

Q. Okay. Could you, if you made arrangements with the other coaches, have lingered behind while the players were walking to the locker room and said your prayer at that point and then caught up with the team?

A. Are you asking me if it's physically possible or is --

Q. Yes.

[47] A. It would be physically possible to do that, yes.

Q. Would that have been acceptable to you to say your prayer while the players were walking to the locker room?

A. Possibly.

Q. Did you ever discuss with the District whether that was a possibility for you to do?

A. No, sir.

Q. Why didn't you talk with the District about that possibility?

A. I was told by the lawyers I couldn't talk to anybody. It was supposed to go through the lawyers. I received a letter from you guys.



Q. Do you know if the lawyers ever proposed to the District that you be allowed to say your prayer on the field after the game once the players were out of the stadium and on their way back to the locker room?

A. I'm sorry. I missed the first part of that.

Q. Did your lawyers ever communicate to the District and say -- and ask whether it would be acceptable for you to say your prayer on the field while the players were out of the stadium and headed back to the locker room?

A. Oh, I -- I don't know if they did.

Q. When you were at a -- an away game, I assume there is quite a variance at different locations as far as [48] how far it is to get from the playing field to where the team bus is. Is that a fair statement?

A. Yes, absolutely. Yes, sir.

Q. Can you give me an idea of the range of things? I mean, I have in my mind a couple locations where we had a bus, you know, like right next to the -- practically on the track and others where it was quite a ways off. Is that kind of the range you had?

A. Yes, sir. Some of them are quite a long distance. It's a good 10 minutes walk back to the locker room.

Q. Uh-huh. Do you use a road locker room typically or do you go straight -- does the team go straight from the bus to the field in its gear?

A. Depends. If they worked out something, we've done both, especially for the JV. We usually just go straight from the bus onto the field.

Q. So you travel in your -- in your pads basically?

A. Yes, sir. They just carry their pads in their bags under the bus.

Q. And there was other situations on the road where you're -- there's a road locker room available to you?

A. Yes, at times.

Q. Would it have been acceptable for you if the District proposed that you, on the road, wait until the [49] team was either on its way to the bus or on its way to the visiting locker room and then said your prayer on the field, and then caught up with the team? Would that have been acceptable to you?

A. I believe so.

Q. And, again, with respect to that sort of arrangement on -- for road games, do you know if that was ever proposed between your lawyers and the District?

A. I have no idea, sir.

Q. Okay. Let's look at Exhibit 10. Exhibit 10 is a letter from your lawyers at the Liberty Institute to the Bremerton School District dated October 14, 2015.

MR. TIERNEY: Oh, wait a second. Do you got it?

MR. ANDERSON: I got it. Go ahead.

MR. TIERNEY: Because I think I may have another copy. I thought we --

MR. HELSDON: There may have been -- I think it was out of order.

MR. TIERNEY: Okay.

Q. (BY MR. TIERNEY) All right. So looking at Exhibit 10, this is a letter from your lawyers at the Liberty Institute to the Bremerton School District; is that correct?

A. Yes, sir.

\* \* \*

[51] Q. So what would -- what would be an example of something that was a religious activity that wasn't private?

A. Probably one that somebody else was holding.

Q. When you say "somebody else was holding," you mean like listening to somebody else's prayer?

A. Yes, sir.

Q. Okay. So you would be distinguishing your activity in saying a prayer in front of the group of students as your participation in it would be private?

A. It's -- that's hard to explain. I could try if you want me to.

Q. I'd like to hear you.

A. So when it first started, it was just myself. And when the kids started asking if they could come out, you know, it was -- wasn't me to tell them they could or could not. And so I was still praying to God. I don't know what they were praying to or who because there was multiple different faiths, some that didn't have any faith. So I try to keep it very generic as far as the language I was using, but I know who I'm talking to and that part of it, kind of the internal part -- I don't know if I'm explaining that well, but it's a, this is my conversation to God giving thanks for these guys. The

way they hear it is more of what they've just did was awesome and I'm proud [52] of them.

Q. So your private religious activity isn't necessarily the private religious activity that the players are having around you?

A. Say that again.

Q. Is your private religious activity, then, different than the religious activity that the players are experiencing?

A. It's more personal. I would say yes. I don't know if "private" is the right word, but it started in 2008 as being a private thing.

Q. So by "private," you didn't mean that you were alone?

A. Right.

Q. There could be people all around you and it's still private is what you're saying?

A. Yes, there's -- there's always people around.

Q. You used the word "personal" a couple of sentences ago. A little bit farther down in this paragraph, the second paragraph on the first page of Exhibit 10 where it describes a post-game personal prayer, do you see that kind of in the middle of the paragraph?

A. Yes, sir.

Q. What did -- when you read that, what did that mean to you, personal prayer?

\* \* \*

[54] been acceptable to you if your prayer was just all by yourself with nobody around you?

A. That would be preferable.

Q. And do you know if it was ever discussed between your lawyers and the District as to whether an arrangement could be made where you would be praying just by yourself with nobody else around you, leaving aside the question of when and where, okay?

A. I don't know if they did or not.

Q. So when you're talking about private or personal in your prayer, it doesn't refer to the composition of the prayer, the words that you use. It refers to more the setting; is that accurate?

A No. So ...

Q. Maybe I asked a bad question. I think I did. Let me put it this way: If you were by yourself and you just said the our father, would that be personal, private prayer?

A I wouldn't say that prayer, but yes. That would -- if it was -- if it was just me talking to God alone, yes.

Q. Okay. So it could be a familiar standard prayer that you were saying and it would still be a personal prayer?

A Yes, sir.

[55] Q. Okay.

A. Also, the whole personal thing is it also relates to the way people were using the word public and prayer. You know, it was, am I doing this as a school person, like a -- or am I doing this as me? It's just between me and God, not the school doing it and the team doing it. That's the personal side of it too.

Q. Okay. Could you turn to page 2, please, sir? And I'm looking at the paragraph in the middle that begins with, "Although Coach Kennedy."

A. Yes, sir.

Q. The second sentence reads, "Each post-game prayer lasts approximately 15 to 20 seconds during which Coach Kennedy is unaware of who may or may not be in the vicinity." Do you see that?

A. Yes, sir.

Q. Now, that sentence certainly didn't apply to when you were standing in the circle of players holding the helmets and praying, correct?

A. No, sir, that's not correct.

Q. Are you saying in those instances you were unaware that there were players around you?

A. No, that's not what I said. I'm unaware of who specifically is there. I'm aware that there's people around, but this is saying that -- that I'm unaware who may [56] or may not be there. I don't know if Johnny or Susie or Timmy is there, or the coaches or whoever. It's not individual people.

Q. Okay. Well, as you look at the players in front of you, you recognize some of the players, correct?

A. Yes, I would.

Q. Okay. So you know who some of the people are that are --

A. Yes.

Q. -- around you?

A. Yes, that is correct.

Q. Okay. Now, moving to the next paragraph, it says, "To summarize, Coach Kennedy engages in private religious expression during noninstructional hours after his official duties as a coach have ceased." Do you see that?

A. Yes, sir.

Q. When you were saying these prayers in a situation where you had been joined by your players and players from the other team and you were holding up the helmets, was your workday as a coach done at that point?

A. The coaching aspects of it, yes.

Q. Did you still have responsibilities for the players round you?

A. I felt like I had some, yes.

[57] Q. As coach, correct?

A. Yes, sir.

Q. Your job as a coach was more than just giving instructions on football, correct?

A. It still is to today.

Q. And you had to get kids from one spot to another safely, correct?

A. Yes, sir.

Q. You still had duties with respect to shepherding the children or the -- the players around, correct?

A. Yes, sir.

Q. Making sure they got from the field to the locker room, correct?

A. Mostly for JV, but yes.

Q. You still had duties with respect to making sure that all the equipment was gathered up?

A. No, that was -- other coaches had that responsibility.

Q. Coaches in general had that duty, though, correct?

A. Yes.

Q. What were your post-game duties?

A. I didn't have any.

Q. You didn't have to make sure that players got to the locker room?

[58] A. I never felt like I needed to. That's what my captains are for.

Q. You don't think coaches are responsible for the players getting back to the locker room?

A. I don't believe so, no.

Q. So if something happened to one of the players somehow after the game, you don't think the coaches had any responsibility for what would happen to a player?

A. I didn't say that, no.

Q. Well, that's what I'm asking you. Do -- do you believe the coaches would be responsible for what happens to a player after a game?

A. Yes.

Q. So did you have any duties as a coach as far as you mentioned looking at film, talking with the other coaches about the game afterwards? Did you have any duties in that sense?

A. Not on Fridays.



Q. So would you typically just leave as soon as the game was over?

A. No.

Q. Why not?

A. Because I wanted to be there for the team. Some of my players, some of them might need a ride home for the coaches.

[59] Q. And do you know whether any of the other coaches had an expectation that there were things that you had to participate in as far as responsibilities toward the team in the post-game?

A. That they thought I had some?

Q. Correct.

A. No.

Q. You don't know if they thought you had --

A. I'm sure they --

Q. -- duties or not?

A. I'm sure they did not think I had any responsibilities.

Q. And you don't believe that the head coach thought you had any post-game responsibilities?

A. Not outside of just being there.

Q. Well, that's a responsibility isn't it, being present?

A. It's an expectation, yes.

Q. And you're supposed to have eyes on the players, correct?

MR. ANDERSON: Object to form.

A. Could you restate that? I'm sorry.

Q. (BY MR. TIERNEY) Have you ever heard that term, "keep your eyes on the players"?

A. Have I heard that term?

[60] Q. Yeah, eyes on the players.

A. It's not one that we would use. I mean --

Q. So you've never heard that term?

A. It's not how we talk. I -- do we watch the kids? Yes. Do -- are we in charge of them? Yes, we are. Are we ultimately responsible? Yes, we are.

Q. And so my question is, again, have you ever heard that term, "eyes on the players"?

A. I don't know if I've ever heard that -- that term.

Q. Have you heard it as "eyes on the students"?

A. No.

Q. Just a second here. How about at road games? Were coaches excused immediately after a game to go home on their own?

A. Sometimes, yes.

Q. And -- and how many coaches did that apply to?

A. Just a few, and it wasn't every time.

Q. Just on a case-by-case basis?

A. Yes, sir.

Q. Overall, were the coaches still responsible for the players in the post-game until they returned them to Bremerton High School?

A. Yes. Sorry.

Q. Okay.

[61] A. Yes, that was their primary responsibility at away games was to make sure that all the kids got from that place back to the school safely.

Q. And that making sure the kids got back to the school safely was part of your official duties as a coach, correct?

A. Yes, at away games. I was on the second bus, so that was my bus.

Q. Okay. Could you turn to page 5 of Exhibit 1 0? There's a section that begins, "Students may voluntarily come to where Coach Kennedy prays." Do you see that?

A. Oh, yes, in bold.

Q. Uh-huh. Did you understand that the position of this letter was that your lawyers were telling the District that you wanted to continue praying with the students if the students wanted to come to where you were praying?

MR. ANDERSON: Object to form.

A. That's not quite accurate summarization of that. It was I wouldn't have to run away if they did want to go because it says clearly in the 2340, I cannot encourage nor discourage the kids. So I can't tell them no, you can't come out here. That's what the whole point of that was.

Q. (BY MR. TIERNEY) So would it then -- was your understanding of this letter, Exhibit 10, that your lawyers were leaving open the possibility that the District would [62] make some sort of arrangements that would ensure that when you were doing your prayer that the students weren't around other than

saying it's up to you to shew them away or keep them away from you?

MR. ANDERSON: Object to form.

A. It was my -- my intention of that, that I would work with the school for directly that. We had a plan that when the kids went away from me from the midfield, I would take a quick knee so I would be alone. That was what our plan was.

Q. (BY MR. TIERNEY) When you say that was what your plan, you mean you and your lawyers?

A. And the school.

Q. So you're saying the school said that that was okay?

A. No, I did not say that. I said that's what I was going to do. I told everybody that's what I was going to do.

Q. And did the school agree to that?

A. No, they did not.

Q. So that was your proposal?

A. Yes, it was.

Q. And not one that was agreed on by the school?

A. That is correct.

Q. Is that set forth in writing somewhere that that [63] proposal was made to the school?

A. I do not know, sir.

Q. Do you know of any written proposal on your behalf such as Exhibit 10, that was made to the school as to arrangements that would allow you to continue some form of prayer post-game?

A. Just this one, this exhibit.

Q. Do you know if there was ever, on your behalf, a retraction made of any part of what was contained in Exhibit 10?

MR. ANDERSON: Object to form.

A. I do not know, sir.

Q. (BY MR. TIERNEY) You don't know if your lawyers ever contacted the school and said, okay, we said A, B, C in the letter, but we're not going to hold onto A anymore, just B and C?

A. I -- I don't know what both sides lawyers talked about.

Q. Okay. If you could turn to the last page, page 6 of Exhibit 10, and read to yourself that last paragraph, please.

A. Under conclusion? Or the very last one?

Q. Yeah, the one that says, "Beginning." Yeah, the very last one.

A. Oh, very last.

[64] Q. So did you understand that last paragraph to be saying that you wanted to continue your prior practice with no changes in the process?

MR. ANDERSON: Object to form.

A. That's not what that says. And it's not what I was asking for.

Q. (BY MR. TIERNEY) Do you see where it says, "He will continue his practice of saying a private post-game prayer at the 50-yard line"? What did you think that meant?

A. Exactly what it says, that I was going to continue doing what I started out doing. And with the

direction of the school saying I could say a prayer as long as it didn't interfere with my duties, that is exactly what I was going to do.

Q. And you didn't -- did you see that as any change from what you had done in the past?

A. Yes, sir.

Q. And how was this a change?

A. Because I was -- I would do it out in the middle of the field or wait and see if any kids came out. It was after I talked to all the coaches. This was going to be as soon as I was done talking to the coach and while the kids were doing the fight song, I would take a knee by myself and give thanks and continue on.

[65] Q. Do you believe that this conveys that that plan -- when I say, "this," I mean Exhibit 10. Do you think what you just described is described in Exhibit 10 anywhere?

A. Not in just that paragraph, but throughout this, I believe it was pretty clear. Maybe it wasn't. I don't know.

Q. Do you think there's anything in Exhibit 10 that says that you won't pray with students if they come around you?

A. Say that again.

Q. Do you think there's anything in Exhibit 10 that says that you are proposing that you will not pray with students if they come around you?

MR. ANDERSON: If you need to review the document, Joe, you can review the document.

A. Okay. I'm sorry. One more time. I'm sorry.

Q. (BY MR. TIERNEY) Is there anything in Exhibit 10 that says you are going to stop praying with students?

A. No, there is nothing that says that specifically.

Q. So where it says in the last paragraph, "Coach Kennedy will continue his practice," do you understand that that is saying that you will continue your practice of praying with students if the students come around you?

A. I wasn't going to stop my prayer because there [66] was kids around me. Q. So is that a yes, sir?

A. I -- I'm sorry, one more time, could you just?

MR. TIERNEY: Could you read that question back, please?

(The record was read back by the reporter.)

A. Yes.

Q.(BY MR. TIERNEY) And did you ever -- after this October 14, after Exhibit 10, did you ever have any conversations with the administration directly yourself about arrangements for a prayer for you, or was it all through your lawyers?

A. Hold on. October 14th. Oh, October 14th. No, I -- I do not believe we -- I talked to anybody in the school.

Q. After October 14th?

A. Correct.

Q. Why not?

A. Because you instructed me in a letter saying I had to -- everything was going through the lawyers.

Q. When you say "you," who do you mean?

A. I had a letter from your law firm that stated that.

Q. Are you sure it was my law firm, sir?

[67] A. I believe it was. It was from the school district.

Q. And who at the school district?

A. Who at the --

Q. Who at the school district?

A. It was a law firm. I don't know what the name of the law firm was.

Q. Do you know if it was Jeff Ganson's law firm?

A. I don't know.

Q. I'll just tell you. I didn't get involved in the case until August of 2016.

A. Oh, I -- I didn't know that. I just know it was a law firm from the -- representing the school. I'm sorry. I'm making the assumption it was you.

Q. And that the -- you're saying that part of the letter was that you shouldn't speak directly to the administration of the school?

A. Yes, it says that things would go through the school -- or through the lawyer. They would be handling all -- all of this. It wasn't from lack of me wanting to.

Q. Are you sure that wasn't a letter from your own lawyers? A. I'm almost positive, yes.

Q. So after that letter of October 14 at the Centralia game on October 16, you -- you prayed on the [68] field after the game, correct?

A. That is correct, sir.



(Exhibit No. 11 marked for identification.)

Q. (BY MR. TIERNEY) Handing you what's been marked as Exhibit 11. And this is a photograph of you in the midst of some Centralia football players; is that correct?

A. Yes, sir, it is.

Q. And do you recall praying on the field with those players after the game?

A. I recall starting to pray alone. I was alone when I started.

Q. And when you say you were alone, there's people standing around with cameras and that. Were they in the vicinity when you started to pray?

A. They were all on the sidelines, sir.

Q. So you're saying that you started praying and then these people that are standing there came from the sidelines and got to your location before you were finished praying?

A. Yes, sir.

Q. Do you recognize who any of those people standing there are?

A. The ones standing in the background, I see the athletic director. I can remember the local news lady from [69] Seattle, Chris Henry from the Bremerton Sun, or Kitsap Sun. Those are the only ones that I recognize that are standing.

Q. Okay. Do you recognize any of the players?

A. No, sir, not a single one.

Q. This man in a trenchcoat in the foreground, do you know who that is?

A. 10, right here this the front?

Q. Yes.

A. Yes, I do. That's Jesse Young, our state representative.

Q. What was Jesse Young doing there?

A. In this picture or at the game?

Q. In this picture.

A. He looks like he's praying with me, sir.

Q. Had you spoken to Mr. Young prior to this?

A. Yes, sir. I talked to him, actually, during the game also. He was on the sidelines.

Q. Did you tell him you were going to pray?

A. Yes, I did.

Q. And what did he say?

A. He said he would be there to support me.

Q. So when you started praying, you knew Jesse Young was -- was there next to you, correct?

A. No, sir.

Q. Well, he told you he was going to be there next [70] to you, didn't he?

A. He was there to support me. I told him I was going to pray alone on the field.

Q. And he said, "I'll be there to support you"?

A. No. It was prior to that. He said, "I'm here to support you," and I said, "I am" -- "I'm going to pray alone on the field."

Q. And did he say that he would pray with you?

A. He didn't say anything after that.

Q. And so you're saying you didn't know he was - that was his hand on your back?

A. Oh, absolutely not. I had no idea who was around me. I was just hoping it was none of the Bremerton players.

Q. Prior to this game, had you talked to Mr. Young?

A. Yes, sir.

Q. How many times?

A. Maybe a dozen times.

Q. What did you talk about?

A. Started out getting to know who he was because he introduced himself. I didn't know who our local representatives were, and he showed up at one of the games and we started talking. I got to know him as a person. I got to know his family. I got to meet a lot of his friends.

[71] Q. And did he encourage you to keep playing -- praying on the field?

A. He expressed that he was very proud of me expressing my faith and not being ashamed of it.

Q. Okay. And did he encourage you to keep praying on the field?

A. No. He just encouraged me to keep going with doing what I was doing. I mean, it was a rough time for me and encouraging was really nice to hear.

Q. Did he suggest that you should challenge the District's rules regarding the prayer on the field?

A. No.

Q. Did he encourage you to challenge them?

A. No. He was not happy with the school.

Q. Did he encourage you to follow the school's regulations while they were being challenged in court?

A. No. No, he did not.

Q. Did he say anything to you about whether you should follow the school's regulations or not?

A. No, he did not.

Q. So this game in Centralia that's where -- that preceded this exhibit, this prayer that's depicted in Exhibit 11, that was the homecoming game, correct?

A. Yes, I believe it was. Yes.

(Exhibit No. 12 marked [72] for identification.)

Q. (BY MR. TIERNEY) Handing you what's been marked as Exhibit 12. This is a letter to you from the Bremerton School District dated October 23rd, 2015, correct?

A. Yes, it is.

Q. And it's signed by Dr. Leavell, correct?

A. Yes, sir.

Q. At the end of the second paragraph on the first page of Exhibit 12, the last clause is, "Your intention to pray at midfield following the game was widely publicized, including through your own media appearances." Do you see that?

A. Where is that again?

Q. The end of the second paragraph.

A. End of the second. Okay. Yes, I see that, sir.

Q. Is it true that you had made media appearances saying that you were going to pray at midfield following the game?

A. I don't remember. It's possible.

Q. Why did you do that?

A. Why did I --

Q. Why did you make media appearances saying that you were going to pray at midfield following the game?

A. They asked me what I was going to do and I answered their question.

[73] Q. Why did you appear on the media?

A. Because they asked me for an interview.

Q. Okay. They asked you and you agree to everything that anybody asks of you?

A. For a lot of these, yes.

Q. Okay. And so why question is why? Why do you -- why do you agree to appear on the media?

A. I don't know. It's kind of rude to turn people down and also -- I don't know.

Q. Did you enjoy being on the media?

A. Not particularly.

Q. So why did you do it?

A. Because I was spreading the word of what was going on in Bremerton.

Q. So you appeared on the media because you wanted to spread the word about what you were doing?

A. I was sharing the word, yes, sir.

Q. Okay. At the top of page 2, could you read that first two sentences to yourself?

A. Page 2, the top?

Q. Page 2 of Exhibit 12?

A. Okay.

Q. Starting at the top, if you could read the first two sentences to yourself.

A. Yes, sir.

[74] Q. Do you disagree with what the District is saying there about the extent of the duties of assistant coaches, paid assistant coaches?

A. No, sir.

Q. I'm sorry?

A. No, sir.

Q. Then the next sentence after that, if you'd read the one that begins with "Indeed."

A. Yes, sir.

Q. Have you read that?

A. Yes, sir.

Q. Where it says, "Until recently, you regularly came to the locker room with the team and other coaches following the game," is that a true statement?

A. Where did you want me to end?

Q. Just with the part that I said. I'll read this.

A. Okay.

Q. Okay. So listen to what I say. "Until recently, you regularly came to the locker room with the team and other coaches following the game."

A. Yes, sir.

Q. Is that a true statement?

A. Yes.

Q. The next, "That you have been among the assistance coaches with specific responsibility for the [75] supervision of players in the locker room following games." Is that a true statement?

A. In that year, yes.

Q. And then, "That you have helped in the supervision of students until they are picked up by their parents or leave the facility, including post-game meetings between the head coach and coordinators." Is that a true statement?

A. Yes, sir.

Q. Then the last sentence, "From this review" -- I'm sorry. The second to last sentence. "From this review, I am satisfied that you are and have been aware that as a paid assistant coach, you remain on duty following games until the last student has left the event."

Were you aware of that?

A. Yes, sir. It clearly states it here.

Q. Was that a true statement?

A. Yes, I believe he was satisfied that that's what the expectation is until the last kid left.

Q. And he's also saying that you were aware of that. Were you -- had you been aware of that?

A. That was never a practice prior to this.

Q. Prior to this letter that -- that you remained on duty following games until the last student has left the event?

[76] A. That is correct, sir.

Q. And you were not aware of that?

A. That was not what we did.

Q. Then the last sentence of this said, "If that has been unclear, I trust any confusion on your part as to these expectations has now been remedied."

A. Yes, sir, that is a true statement.

Q. So once you got this letter, you understood that that's what the superintendent's expectations were as far as the extent of your duties?

A. Absolutely.

Q. Then in the next paragraph where it states -- let's see, that's the first, second, third sentence, "The field is not an open forum to which members of the public are invited following completion of games." Do you see that?

A. Yes, sir.

Q. Did you believe that was a true statement?

A. Up to this point, no.

Q. After this point, did you recognize that that was a true statement?

A. Yes, that's what they decided.

Q. And you didn't have any doubt that the District had the authority to control the use of the field after football games?

[77] A. Oh, I -- I believe they did have control to do that.

Q. And you understood when you got Exhibit 12 that the District was saying that members of the



public are not invited onto the field after the completion of games?

A. Yes, sir.

Q. And you understood that that was a direction to you that members of the public were not to be invited on the field after completion of games?

A. Yes, sir, and we also shared that with the fans at the game.

Q. And you had no doubt that the District had the authority to tell you not to invite members of the public onto the field after the game?

A. That is correct.

Q. Okay. Moving down to the last paragraph on that page, page 2 of Exhibit 12.

A. The last paragraph?

Q. The last paragraph --

A. Yes, sir.

Q. -- at the bottom of page 2 on -- on -- of Exhibit 12.

In the middle -- let's see. In the middle of the third sentence, there's a sentence that begins with "On the other hand."

[78] A. Yes, sir.

Q. Do you see that? If you read the paragraph from there on to the end.

A. Yes, sir.

Q. Did you understand that Dr. Leavell was inviting you to have discussions about finding an accommodation that would allow you to continue your practice of prayer in some fashion?

A. Yes, sir.

Q. And do you know if, following this letter of October 23rd, you or your representatives made any new proposals as to how you might conduct prayer after games?

A. I did not, but I don't know about if my lawyers did or not.

Q. Did you have any doubt that Dr. Leavell was interested in finding some way to develop an accommodation with you that would allow you to continue having a prayer after the game?

A. I knew he was working -- working very hard with that.

Q. So you didn't doubt his sincerity?

A. No, not at all.

Q. You described returning to the field after people had left and praying at one point?

A. At the Olympic game, yes, sir.

[79] Q. And were you at Dr. Palm's deposition?

A. No, I was not.

Q. Have you read the transcript of his deposition?

A. No, I have not.

Q. Well, I'll represent to you that Dr. Polm said words to the effect that you had mentioned that or you said something about returning to the field after the game and he said, Fine, you can -- that's -- no problem with that. Do you remember having a conversation like that with Dr. Polm?

MR. ANDERSON: Object to form.

A. No. I don't believe I ever had a conversation with him about that.

Q. (BY MR. TIERNEY) Did anybody at the District ever express any opposition to your returning to the field and praying after the players had left?

A. Not that I'm aware of.

Q. And looking at page 3, the first paragraph at the top of page 3 on Exhibit 12, the last sentence of that paragraph says, "Please let me know if you would like to discuss such accommodations."

Did you understand that Dr. Leavell was asking you to contact him directly if you wanted to discuss accommodations? A. Yes, sir. I see that.

[80] Q. Did you understand at the time that Dr. Leavell was willing to talk to you directly about finding accommodations?

A. Yes, sir.

Q. And did you ever take him up on that?

A. No, I could not.

Q. Why not?

A. Because lawyers said that I could not.

Q. Which lawyers?

A. The District's lawyers. I received four letters from the District; three from Dr. Leavell and one from the lawyers that represented the school District.

Q. And they -- the lawyers were telling you don't talk to Dr. Leavell?

A. They told me everything goes through them.

Q. And did you understand that Dr. Leavell was saying something different to you in this October 23rd letter?

A. Yes, and as much as I respect the man, I'm not going to go against what lawyers say. I'm in enough trouble.

Q. Did anybody on your behalf, your lawyers or anyone, communicate with the District about the apparent difference between Dr. -- what Dr. Leavell was saying in Exhibit 12 and the letters that you had gotten from the [81] District's lawyers?

A. I'm sorry. I missed the first part of that.

Q. Let's put it this way. Did anybody in your behalf say, What gives? Why is the lawyers saying don't talk to the District and Dr. Leavell is saying please call me?

A. I -- I don't know.

Q. Did you ever send any sort of communication at all that says, look, am I supposed to talk to you directly or not?

A. No, I don't think I ever said anything to him, as much as I wanted to.

Q. Let me ask you something. Your wife is on the higher level cabinet for Dr. Leavell; is that correct?

A. That is correct, sir.

Q. Did you ever ask her to find out whether you could talk to Dr. Leavell directly or not?

A. No. She knew how much I wanted to.

Q. How much you wanted to talk directly to Dr. Leavell?

A. Yes.

Q. And this last paragraph on page 3 of Exhibit 12, the second sentence there, it says, "You may not repeat your conduct of October 16, 2015 for the reasons discussed above." Do you see that?

[82] A. Yes, sir.

Q. Did you understand that that was direction from Dr. Polm to not pray as you did in the circumstances that you did at the previous game?

MR. ANDERSON: Object to form.

A. Dr. Leavell.

Q. (BY MR. TIERNEY) What did I say?

A. You said "Polm."

Q. Oh, it was a terrible question. I'm going to do that over again.

MR. TIERNEY: Agree that it will be stricken.

Q. (BY MR. TIERNEY) Okay. Did you understand that that sentence that was just read from the last paragraph of Exhibit 12 was direction from Dr. Leavell that you do not pray in the manner that you did after the previous game?

A. Yes, sir.

Q. You didn't have any doubt what he was directing you to refrain from doing, did you?

A. No. That was very clear.

MR. ANDERSON: We've been going another hour.

MR. TIERNEY: Yeah. I was going to say. I think I want to fiddle with the video. So I think we're ready for that or close to it.

[83] MR. ANDERSON: All right.

THE VIDEOGRAPHER: The time is 12:08 P.M. we're now going off the record.

(Luncheon recess was taken from 12:08 to 12:51 P.M.)

THE VIDEOGRAPHER: The time is 12:51 P.M. We're now back on the record.

Q. (BY MR. TIERNEY) Okay, Mr. Kennedy, what I'd like to do next is play a video which, were you in the deposition before when we played videos of the --

A. Yes.

Q. -- end of games? Okay. That's okay.

A. Sorry.

Q. That's okay. No, that's all right. You were there, those days when they got played, right?

A. Yes, sir.

Q. This is one that we've -- we've already seen, but I just want to play it so you have seen it and then I'm going to ask you some questions about it.

A. Okay.

Q. And this is of the JV game and it was, I believe, the last game where you coached. So this would be, I believe, the October 26, 2015 JV game with North Mason. Now, was that the last game you remember coaching?

A. Yes, sir.

[84] Q. Okay. And we played this -- or this was played in a previous deposition where you were attending?

A. Yes, sir.

MR. TIERNEY: Okay. So let's play it again.

(Playing video 12:52 to 12:58 P.M.)

Q. (BY MR. TIERNEY) Now, the --

MR. TIERNEY: I didn't give you the number off of that. That was -- had a serial number of B1900500. And let's mark these.

(Exhibit Nos. 13-16 marked for identification.)

Q. (BY MR. TIERNEY) Okay, Mr. Kennedy, I've handed you what's been marked as Exhibits 13, 14, 15, and 16. Do you recognize these to be still shots taken from --depicting some of what was in the video that was Exhibit 12?

A. Yes, sir.

Q. Oh, wait, stop.

MR. ANDERSON: I don't think we marked the video.

MR. TIERNEY: Yeah. I gave you the number for it, but we didn't mark it. Let's mark the video now. Then it will be Exhibit 17. Bates number but not the --put it in.

[85] (Exhibit No. 17 marked for identification.)

Q. (BY MR. TIERNEY) Okay. So do you recognize Exhibits 13, 14, 15 and 16 as still shots of what's depicted in Exhibit 17?

A. Yes sir.

Q. Now, the video showed you playing in the middle of the field; is that correct?

A. Yes, sir.

Q. Exhibit 17.

And there were some people that came out and knelt around you while you prayed, correct?

A. Yes, sir.

Q. And I want to ask you first of all who those people were. And what I've done in Exhibits 13, 14, 15 and 16 is have numbers on people and it should be the same number for the same person each way through. That way you can pick out who they are. So let's start with Exhibit 13. Is -- Number 1 is you, correct?

A. Yes, sir.

Q. And there's a Number 2. It's more visible in Exhibit 14 in the tan trenchcoat. Is that Jesse Young?

A. Yes, it is.

Q. Okay. And Number 3 is a man, looks like pretty husky guy. Do you know who that is?

A. Yes, sir. I don't remember his name. He's one [86] of the state senators.

Q. And then Number 4 is a gentleman. Do you know who that is?

A. He is one of their friends. I don't know who that was.

Q. And Number 5 was a woman. You can see her pretty clearly in -- in Exhibit 13. Do you know who that was?

A. Yes, sir.

Q. Who's that?

A. It's [redacted]

Q. Say that again, please?

A. [redacted]

Q. [redacted]



A. Yes.

Q. [redacted]

A. Yes, sir.

Q. Okay. And there was a kid. It looks like a boy that seemed to be standing with her, more clear in Exhibit 16. He's got Number 7 on him.

A. I'm not sure, but I think that might be her son, [redacted].

Q. Okay. All right. Then -- well, actually, I'm sorry. There's a woman. It might be the wrong mix-up. Let's go back. We had -- Number 5 was [redacted]?

A. Yes, sir.

[87] Q. And Number 6 is a gentleman. Do you know who that is?

A. No idea, sir.

Q. Number 7 is a -- looks like young man.

A. I have no --

Q. I think he's with the woman one who's Number 8. Do you know who either 7 or 8 are?

A. No, I don't.

Q. All right. Number 9 is this gentleman in the jeans and he appears to be videoing. Do you see him?

A. Yes, sir, I see him.

Q. Do you know who that is?

A. No idea, sir. Q. Had you ever seen him before?

A. No, sir.

Q. Did you know what these people were doing on the field?

A. I knew what Jesse and 2, 3 and 4 and 5, I know why they were there.

Q. Why were they there?

A. They were there to support me and Jesse and the other two gentlemen were going to talk to the team.

Q. What were they going to talk to the team about?

A. I -- at the time, I figured they were going to give them a pep talk like they always do and tell them what [88] a great job they did and how proud he was.

Q. When you said, "like they always do," like, had they talked to the team before?

A. They have.

Q. When did they talk to the team before?

A. There was the Olympic game. I believe it was Olympic. Yes. On the 21st. And also had, one of my friends had just got back from Afghanistan that also talked to the team.

Q. And did you invite them to come onto the field and pray with you?

A. No, I did not.

Q. Did they ask for permission to come on the field after the game?

A. Yes, they did.

Q. And you gave them permission?

A. For 2, 3 and 4, I did.

Q. How about these other people? Did you ask them for permission -- or did they ask you for permission to come on the field?

A. No, they did not.

Q. And the gentleman that was filming it, did he ask for permission?

A. No, he did not.

Q. And you understood that the -- the District had [89] told you that the field was closed to the public after games?

A. Yes.

Q. Did you ask the District if you could invite people onto the field after the game?

A. No.

Q. Why not?

A. Why did I not ask for permission?

Q. Correct.

A. Because the three representatives from our State, I didn't look at them as being the public. They are State employees and they're part of our government.

Q. Are they part of the District government?

A. I don't know how that lines up. They don't work directly for Bremerton School District.

Q. Did you even think to ask the district what the policy would be to have politicians come on the field after the game?

A. No.

Q. And these other people who came on the field, did you ask the District whether you could have other people on the field?

A. I didn't have anything to do with that.

Q. And had you told Jesse Young that you were going to pray after the game?

[90] A. I don't know at this game specifically if I did or not.

Q. It's the kind of thing you had told him in the past, correct?

A. At one of the other games, yes. The Centralia game.

Q. And tell me, who is [redacted]? What's her connection?

A. She is a friend of the family. Her family helped raise my wife when she was young.

Q. Does she work for the school district?

A. No, she does not.

Q. Did you know she was going to come out on the field?

A. No, I did not.

Q. And you said the person that was Number 4 was somebody that was with the two politicians?

A. Yes, sir.

Q. But you don't know his name?

A. No, I do not.

Q. Did -- did you know he was going to come out on the field?

A. He was with them. I didn't think about it one way or another.

Q. And then in Exhibit 14, there is a youth. Hard [91] to tell how old he is, but with Number 10 on his back and an older man with number 11 that they came into the picture towards the very end?

A. Number 10 and 11?

Q. Yeah. If you look at Exhibit 14. That's this one here.

A. Right. I was trying to get -- see if I could see who they were.

Q. I could play it back. They come into the frame later and come up and join the prayer circle.

A. Off the top of my head, I have absolutely no idea who that is.

Q. I noticed on the video that you were talking to the older man. Do you remember that at all?

A. Yes, I do.

Q. And what were you saying?

A. He introduced himself and I said it was a pleasure to meet him and he started talking about who he was and what he did and...

Q. And you don't remember any of that? You don't remember who he said he was or what he did?

A. No.

Q. And was that the first time you had ever met him?

A. I -- I do believe so.

Q. And he did not ask for permission to come out on [92] the field?

A. No, he did not.

Q. And I think you described what the -- the talk was from Mr. Kennedy and what was the representative's name, the senator's name? Did you say the -- person Number 3, the senator, the man, the husky guy.

A. I don't remember his name.

Q. Senator blank, but it was just basically a pep talk?

A. Oh, yes, it absolutely was. We basically crushed North Mason. It was an awesome game and they really pointed out -- one of my players put a smile on my face because he became one of Bremerton's best running backs.

Q. So this young man that's Number 10 in Exhibit 14, do you know if he was a student or not?

A. No, sir, I have no idea who that is.

Q. And then looking at Exhibit 13, the young man with Number 7 on him, do you know if he was a student or not?

A. No, I don't.

Q. They look to be of the age of students, high school students or younger, correct?

A. Number 7 looks a lot younger. Number 10, possibly be high school.

Q. And did you ask anybody what the person filming [93] was -- was doing?

A. No, I -- I did not.

Q. Now, when we were talking about Exhibit 12, you were clear that you understood that Dr. Leavell was instructing you not to have prayers on the field after the game, correct?

A. Yes, sir.

Q. And so when you were having the prayer that's depicted in the video and the photographs from Exhibit 13 to 17, you understood that you were doing

something that Dr. Leavell had told you not to do, correct?

A. Correct.

Q. Sorry. And did you expect at that point that you would be hearing about it from the District?

A. At this moment? No, not at this moment.

Q. Before you did it?

A. No. At the previous game, the varsity game.

Q. You expected you would be hearing from the District about the prayers on the field after the game?

A. Yes.

Q. And then after you did this at some point, did it come to your mind that you would be hearing about the prayer after the North Kitsap JV game as well?

MR. ANDERSON: Object to form.

A. The JV -- which one?

\* \* \*

[98] lawyers to the District proposing accommodations?

A. Not that I remember, sir.

Q. Then if you look at paragraph 3 on Exhibit 18, just take a second to read that.

A. (Witness complies.)

Q. Okay. So that paragraph begins, "Rather than contact me or use any of the offered accommodations," do you read that as Dr. Leavell being critical that you had not contacted him?

A. I'm not sure I quite understand that question.

Q. Well, it sounds like Dr. Leavell expected you to contact him.

A. Yes, that's what it sounds like in this letter.

Q. And after you got this letter, did you ever communicate with the District and say, look, Dr. Leavell is talking about me contacting him, but I'm not supposed to contact him, or words to that effect? Did you ever make that communication to the District after receiving Exhibit 18?

A. I couldn't. That's what it said, not to talk to the Bremerton School District about it.

Q. Did your lawyers ever send any communication to the District after Exhibit 18, saying that you weren't allowed to directly communicate with Dr. Leavell?

A. Any other than the letter that the District's [99] lawyers provided?

Q. I'm talking about your lawyers. Did your lawyers ever send anything to the District that said words to the effect of, look, you keep talking about Kennedy contacting Leavell, he's not supposed to contact Leavell?

A. I -- I have no idea.

Q. Then in this paragraph 3 -- on the third paragraph on Exhibit 18, Dr. Leavell describes the instances where you prayed at the North Mason JV game and the North Mason varsity game, correct?

A. That is correct.

Q. And he said in the last sentence of that paragraph, "Your conduct on both occasions was in



direct violation of the directives set forth in my October 23 letter.” Do you see that?

A. Yes, I do.

Q. And you understood that your conduct at those -- on those occasions was in violation of his directives to you, correct?

A. Yes, I do.

Q. Then as we go down to the last paragraph, why don't you take a look at that for a second. It starts out with, "I regret the necessity of this action." Did you believe that Dr. Leavell would have preferred to have worked something out with you?

[100] A. Yes.

Q. And did you believe that he sincerely regretted the need to -- what he saw as the need to take this action?

A. Yes.

Q. Then the letter closes. The last two sentences are, "Please know that the District remains willing to discuss ways of accommodating your private religious exercise. Please contact me if you wish to discuss the options I have previously identified or any other options you may have in mind."

Now, do you know if anybody on your behalf contacted the District with any options or ways to resolve the controversy, come up with an accommodation that worked for both sides?

A. Besides the letter that they sent, I do not know.

Q. The letter that was Exhibit 10?

A. Yes, sir.

Q. So as far as you know on your behalf, the only position that was ever expressed about what accommodation would be acceptable to you would be that that's expressed in Exhibit 10?

A. Yes, sir.

(Exhibit Nos. 19-20 marked for identification.)

Q. (BY MR. TIERNEY) You've been handed what's been [101] marked as Exhibits 19 and 20. Exhibit 19 is a document entitled "Assistant Coach Responsibilities." Do you see that?

A. Yes, sir.

Q. And Exhibit 20 is a coach and volunteer agreement with your signature on the bottom, correct?

A. That is correct.

Q. And it looks like the date is 5-October '15; is that correct?

A. Yes, that is correct.

Q. Have you ever seen Exhibit 19 before?

A. Prior to this, all of this? Or ever?

Q. You mean prior to the controversy?

A. Yes.

Q. Yeah, let's say that.

A. No, I -- I have never seen that before until after the controversy.

Q. When was the first time you saw Exhibit 19?

A. When I started reading through everything as far as what the District's policies and all the handbooks and WIAA and started doing all the research on where everybody stood.

Q. And -- and was that before you filed your lawsuit or after?

A. It was -- it was before.

\* \* \*

[106] correct?

A. Yes, I have. Yes, sir.

Q. Now, if you could turn to Exhibit 20, this is, in essence, your coaching contract for 2015, correct?

A. Yes, sir, it is.

Q. Is that how you generally refer to this?

A. Yes, it is.

Q. The first -- at the top it says, "I am honored that the Bremerton school District has entrusted me to be a coach, mentor and role model for student athletes."

Did you understand that you were expected to be a mentor and role model?

A. More than most people, yes.

Q. And that's part of the territory that comes with being a coach, correct?

A. That is exactly what we're supposed to do.

Q. There's a lot of kids, would you agree, that in their lives, the coach is -- a coach of a particular sport might be the absolute most important person that they encounter at school?

A. Yes.

Q. Would you agree that for some kids, the coach might even be the most important person they encounter in their overall life?

A. Yes.

[107] Q. Some of the kids don't have two parents -  
- don't have one parent, much less two, correct?

A. That is correct.

Q. And for those kids, the coach is a towering  
figure sometimes, right?

A. A towering figure?

Q. I mean as far as importance in the -- in the  
person's life?

A. Yes.

Q. There are kids at Bremerton from really  
challenging -- Bremerton High School, really  
challenging circumstances, right?

A. Yes, sir, I was one of them.

Q. Yeah. And there are kids that, I've heard the  
story but I'm asking you if it's correct, where -- where  
for sometimes, the coaches would even be involved in  
getting food for the kids?

A. Yes, many times.

Q. That gives the coach a tremendous amount of  
influence just because there's no other influence on the  
-- on the kid, correct?

A. Yes, sir.

Q. Would it be fair to say that the scope of what a  
coach has to do with some of the kids, some of the  
student athletes is much more than what any teacher  
in a classroom [108] has to do with those kids?

A. Absolutely.

Q. And you understood that going into being a  
coach, correct?

A. Yes.

Q. You weren't surprised to find out that coaches wore a whole bunch of hats, right?

A. Didn't surprise me at all. Q. It's not just teaching kids, well, here's how you block, here's how you tackle, right?

A. That is correct.

Q. And even for the kids that aren't in real challenging circumstances, sports can be a huge part of their learning process, correct?

A. I would say for everybody that played any sport.

Q. And it can spill over into the rest of their education, how -- how they work, how -- how well they learn, how much they pay attention, things like that?

A. Yes. It's part of it. They're student athletes.

Q. When you were around the players and you're at a football function, you know, they're in their gear, they're in their pads and whatever, do you think there's any time where they're not, at least some of them, maybe some of them are not paying attention, but where there's at any time in there, those kids are paying attention to you, [109] correct?

MR. ANDERSON: Object to form.

A. Just me or aware I was there or --

Q. (BY MR. TIERNEY) Coaches in general?

A. Yes, they're --

MR. ANDERSON: Same objection.

A. They're aware that we are there.

Q. (BY MR. TIERNEY) When the -- when the -- when the kids are at a practice or a game with the

coaches, the -- the coaches are visible to the kids, correct?

MR. ANDERSON: Object to form.

A. Yes.

Q. (BY MR. TIERNEY) Do you think there's any point in there where the coach is free to behave in a way that's not conducive for the kids, not helpful for the kids?

A. Could you say that again?

Q. Is there any time when you're around the kids where your behavior doesn't matter?

MR. ANDERSON: Object to form.

A. I don't believe so.

Q. (BY MR. TIERNEY) You wouldn't be free to be on a phone call, for instance, you get a phone call while you're at practice and the kids are around you, but you're -- let's say you're talking to the contractor that's doing some work at your house and things have gone bad. You're [110] not free to be cussing and yelling at the phone right in the presence of the kids, are you?

A. Cussing, no.

Q. No. That's not -- the kids are seeing what you're doing there, correct?

A. A lot of times they could see us, yes.

Q. Yeah. So even if it's your private business, you have to be careful how you behave around the kids, correct?

A. We don't want to do anything that they wouldn't do.

Q. Is there any point when you're around the kids, and when I'm using the fact, I'm saying when they're in their football gear and you're either at a game or at practice, where what you're doing is not in some way or another conveying an example to the kids?

A. I would say not at the games so much. They're more focused on the competition than us.

Q. Well, I'm not -- whether they're focused on the competition or not, I'm sure they are. But to the extent you're behaving, is your behavior always setting some kind of an example to the kids?

A. Yes, to do what is right.

Q. So look at this contract, Exhibit 20 where it says, "Exhibits sportsmanlike conduct at all times," up at the top there. Do you see that?

[111] A. Yes, sir.

Q. That would be important because you're setting an example for the kids, correct?

A. Yes, that's what we teach them.

Q. The next one, "Treating all athletes with respect, including opponents," that's important also, right?

A. Absolutely.

Q. That's not blocking and tackling. That's proper behavior you're teaching, correct?

A. That is correct.

Q. Utilizing positive motivational strategies to encourage athletic performance. What does that mean to you?

A. That you want to be able to motivate them to do the best that they can.

Q. Well, specifically using positive motivational strategies, what does that mean?

A. I can take that two ways. Some kids respond to different ways. Sometimes getting into their butt is a positive thing for them to excel, challenging them. Other times, they might need a hug.

Q. Uh-huh. Okay. But how you approach the kids, how you challenge them, how you communicate with them is an important function for the coach, correct?

[112] A. I would agree with that.

Q. And -- and apart from what you're saying to them, how you're saying it is part of the example you're setting for them, right?

A. For me personally, yes.

Q. Then under, "Always approach officials with composure, I understand that I am constantly being observed by others." That's a true statement, correct?

A. Yes, it is.

Q. You're in a fishbowl when you're a coach at a contest, correct?

A. You're under a microscope, yes.

Q. People are watching pretty much everything you're doing, somebody is watching?

A. Somebody -- sorry.

MR. ANDERSON: Object to form. You can answer.

A. Yes.



Q. (BY MR. TIERNEY) Your expectation at a contest is that there's probably somebody at all times that's going to have their eyes on you, correct? Probably at least one person in the stands. Somebody's going to be -- you -- you can't get away with something without somebody noticing something, correct?

A. That is probably a true statement, yes.

[113] Q. And then just before the bottom it says, "Have read and understand all policies and procedures." Do you see that?

A. Yes, sir.

Q. So that was at least an expectation in the contract that you would read and understand the policies and procedures, even if it wasn't actually followed by most of the coaches, correct?

A. No. The only policies and procedures we knew of was the WIAA and what we had here as the coaching agreement. Those are the only policies that we were aware of.

Q. And you weren't aware of a coaching handbook?

A. I never saw a coaching handbook.

Q. So did you think that there was a time in your -- when you were around the kids when they were in their gear where you stopped being a role model or setting an example for the kids?

A. No. Q. So it was constant?

A. Yes.

Q. When you were around the kids, correct?

A. Still is.

Q. And being a role model and setting an example for the kids was -- you accepted that as part of your job,

\* \* \*

[134] A. Because that had nothing to do with anything.

Q. Well, do you know whether Coach Gillam thought that this item on Number 13 had anything to do with Harrison Hospital?

A. I know it didn't.

Q. How do you know that?

A. Because him and I talked about the Harrison Hospital, what happened into great detail over it. It was not even an issue.

Q. And did you talk -- but you haven't talked to him about why he put down a Number 1 -- Number 1 on Number 13?

A. I haven't talked to Nate Gillam since North Mason game.

Q. So you don't know what he meant by the score on Number 13?

A. Only thing I could think of is because of this whole situation with the prayer.

Q. And do you think Nate Gillam was satisfied with the resolution of the Harrison Hospital issue?

A. I'm sorry. The resolution? What do you mean the resolution?

Q. Well, you said you -- you and he talked about it at length.

A. Yeah, there --

Q. Was he satisfied with the way that came out?

[135] A. Yes, absolutely.

Q. Do you know if Harrison Hospital was satisfied with the way that came out?

A. I don't have any idea. I know that they weren't happy, but I think we did the right thing there.

Q. And did they continue to not be happy?

A. Oh, I have no idea. You'd have to ask them.

Q. I'm sorry. I'd have to ask them or ask Nate Gillam?

A. You'd have to ask Harrison Hospital. Actually, yeah, you would have to ask the lady that was working there for that Gala at the time. That was all stuff that we did as community outreach and for our guys to do community service. I wasn't going to jeopardize my employers and I wasn't going to put them in an unsafe situation like they wanted us to.

Q. After your evaluation -- strike that.

You knew that at the end of the season, Nate Gillam's resignation was announced, correct?

A. After the season?

Q. Yes.

A. I believe it was after the season.

Q. Well, at some point in 2015, his resignation was -- you learned about his resignation?

A. Yes.

\* \* \*

[146] were going about it?

A. No, absolutely not. Quite the opposite.

Q. You were in Derrick Salisbury's deposition where he talked about you missing practices, correct?

A. Yes.

Q. Is that -- was his testimony accurate that you had been missing practices?

A. No. That was incorrect. I did miss one -- part of one practice. I had an agreement with the superintendent to come address the board. There was a board meeting on a Thursday, which was our pregame. And so partway through the practice, I came up through the District. I addressed the board and then I went back to finish the practice with the team.

Q. So Derrick is just mistaken about you missing practices?

A. That is correct.

Q. Did you ever have a conversation with Derrick Salisbury saying your objective was to -- your approach to the prayer practice controversy, that your objective was to change the law?

A. No.

Q. Did you say anything similar to that to John Polm?

A. No.

[147] Q. Ever tell anybody that your objective was to change the law, change the law of the land, something to that effect?

A. In the School District?

Q. Yes.

A. Not that I'm aware of.

Q. Could you pull out Exhibit 4, please. That's your declaration.

A. Sure.

Q. Could you turn to page 4, specifically starting on page -- paragraph number 23?

A. 23 through what?

Q. Just 23 and 24.

A. Oh, okay. Okay.

Q. Paragraph 23 refers to David Boynton engaging in a Buddhist chant at the conclusion of many BHS football games. So my question is did you personally observe Dave Boynton engaging in a Buddhist chant?

A. Did I personally? I mean, did I watch him do this? No.

Q. Did you stand near him and hear him doing -- engaging in a Buddhist chant?

A. He was there with us.

Q. And you heard him engaging in a Buddhist chant?

A. No.

[148] Q. How is it that you know that Dave Boynton engaged in a Buddhist chant at the conclusion of many PHS -- BHS football games?

A. Because we talked about it.

Q. And what did he tell you?

A. He said that he was a practicing Buddhist and when we went out there, he would do his thing. He came out there quite a few times over the past eight years.

Q. And other than him telling you, were you ever able to discern his behavior when he was doing that?

A. No.

Q. Because he was doing it to -- in an inner sense, to himself, correct?

A. Well, he was -- wasn't right next to me. He was on the outside of the circle of players. There's a bunch of people out there and I'm not aware of -- I mean, there's kids talking and stuff. I don't even know what they're saying. It's...

Q. So you never heard Dave Boynton making any chanting sounds?

A. No.

Q. Did you ever talk to anybody that heard Dave Boynton making any chanting sounds?

A. Talk to anybody about -- what do you mean?

Q. Did you ever talk to anybody that had heard Dave [149] Boynton making chanting sounds?

A. I don't think it ever came up.

Q. So do you know of any witness who ever heard Dave Boynton engage in a Buddhist chant near the 50-yard line at the conclusion of many BHS football games?

A. I personally don't.

Q. And you did not ever witness such a thing, did you? A. I witnessed him there.

Q. My question, sir, was did you ever witness David Boynton engaging in a Buddhist chant near the 50-yard line at the conclusion of a BHS football game?

A. I witnessed him there and he said that's what he was doing. Why would I doubt that?

Q. I'm asking if you could discern, yourself, that you were witnessing him doing a Buddhist chant?

A. I don't know how to answer that, I'm sorry.

Q. Well, how could you tell when he was doing a Buddhist chant and when he wasn't doing a Buddhist chant?

A. He said that when he was out there, that's what he was doing when his eyes are closed. If he was doing that with his eyes closed, that's what I would assume he was doing.

Q. So the only observation that you could make of Dave Boynton was that he was standing with his eyes closed?

[150] A. Just like me taking a knee, yes.

Q. Well, was he taking a knee?

A. I was talking about myself.

Q. I know. But you said --

A. It's the same thing.

Q. -- it was just like you. So that --

A. Yeah, it was just --

(The court reporter asked the participants to speak one at a time.)

THE DEPONENT: Oh, I'm sorry. Sorry.

Q. (BY MR. TIERNEY) You said it was just like you. So that leads me to ask you, was Dave Boynton taking a knee just like you?

A. No.

Q. Okay. So he was standing, correct?

A. As I was standing at some, yes.

Q. And he was not saying anything, correct?

A. I don't know if he was saying anything or not.

Q. You didn't hear him say anything, correct?

A. No, I did not.

Q. And all could observe as far as his behavior was that he was standing with his eyes closed?

A. Yes.

Q. Okay. And if he hadn't told you, you wouldn't know whether he was doing a Buddhist chant inside of his [151] head or not, would you?

A. If we were alone on the field, maybe it was -- I don't know. I haven't -- you're talking about a hypothetical situation.

Q. No. Let's be clear. I'm talking about what you actually observed, not a hypothetical, okay?

A. I observed him standing there with his eyes closed.

Q. Okay. And if he had not told you in those instances where you saw him standing with his eyes closed, if he had not told you that he was doing a Buddhist chant, would you have known that he was doing a Buddhist chant inside his head?

A. Probably not.

Q. Okay. Did you ever tell anybody at the District that Dave Boynton was engaging in a Buddhist chant at the conclusion of BHS football games?

A. No. Just like I wouldn't tell anybody that somebody did the sign of the cross or anything else.



Q. I didn't ask you about the sign of the cross, so I want to get a clear record on the -- on the Buddhist chanting, okay? So just want to know whether anybody at the District was ever informed by you that Dave Boynton was engaging in a Buddhist chant at the --

A. No.

[152] Q. -- 50-yard line?

A. I'm sorry.

No. Q. Has anybody ever told you that anyone at the District, other than you and Dave Boynton, was aware of him engaging in a Buddhist chant near the 50-yard line at the conclusion of a BHS football game?

A. Was anybody else in the District aware of it?

MR. TIERNEY: If you could read the question back for me.

THE DEPONENT: Sorry.

(The record was read back by the reporter.)

A. I'm sure some of the other coaches, we have talked about it.

Q. (BY MR. TIERNEY) Which ones have told you that they observed Dave Boynton engaging in a Buddhist chant?

A. Which coaches?

Q. Yes.

A. I couldn't tell you specifically.

Q. Can you give me any names of any person that told you that they observed that.

A. Told me?

Q. Yes.

A. No.

Q. Could you turn the page then at page 5, paragraph [153] 26 at the top. Would you read that?

A. Yes, sir.

Q. When did Jeff Barton tell you that the BHS football field is a public space that cannot be closed to members of the public?

A. That would have been -- I don't know if it was a Kingston or Centralia or Olympic. It was one of those three -- one of the home games that we were at.

Q. And when he said it cannot be closed, did he mean that the District lacked the authority to close it or it simply did not have the physical means of securing the field from the public at that time?

MR. ANDERSON: Object to form.

A. He said that -- that it was a public space because I asked him if -- why can't we just make an announcement not to bring anybody on the field, and he said it's a public place. We can't tell people not to come out there.

Q. (BY MR. TIERNEY) And why were you asking him why they just couldn't make an announcement?

A. Because I didn't want a whole bunch of people on the field. None of us did.

Q. And were those his specific words that you just said?

A. That's in here?

\* \* \*

[162] A. Both of them?

Q. Both of them, yes. Do you have those in front of you?

A. Yes, I do.

Q. After receiving the December 17th, 2015 letter from Dr. Leavell, did you, at any game for the duration of the 2015, season pray with student athletes or join the student athletes in prayer prior to a football game?

A. Was that the first letter I received from the District? Do I have a copy of it?

Q. So I think Exhibit 3 that you should have in front of you is the December 17th, 2015 letter.

A. Oh, okay.

Q. You can take a second to refamiliarize yourself with that document if you need to, let me know when you're done.

A. This is before the Olympic, yes.

Q. So my question is, after receiving this September 17th, 2015 letter and for the remainder of the 2015 season until you were placed on leave, did you ever join with student athletes in prayer prior to football games?

A. No, I did not.

Q. Did you ever join with student athletes in prayer after football games after receiving this letter?

[163] A. No, I did not.

Q. Specifically student athletes from Bremerton High School?

A. No, not Bremerton.

Q. Mr. Kennedy, I want to refer you to Exhibits 1 and 2, which are the football schedules here. The -- you

had -- do you remember discussing with counsel for the District the Olympic game on September 18th?

A. Yes, I do.

Q. Do you see that the next football game is the varsity game at Port Angeles?

A. Yes, sir.

Q. Did you pray after the football game at Port Angeles?

A. Yes, I did.

Q. And when did you -- can you just describe what you remember about your prayer at Port Angeles?

A. The -- both teams met at midfield, shook hands, went over and talked to the coaches. I went back to the sidelines. The players went out to the -- to the stands, did the fight song. They ran out to the 50-yard line and they were calling me to come out and I waived them off. One of my team captains lifted up two helmets and talked to the teams and they came back over. We grabbed all of our stuff and as they were headed off to the field, I was [164] talking to the coaches. And I took a knee, said my prayer and continued watching -- walking with the rest of the team.

Q. What about the next junior varsity game, which was also against Port Angeles on September 28th? Do you recall praying after that game?

A. Yes, sir, I did.

Q. And what do you remember about your prayer after the Port Angeles game, JV game?

A. As they went off to do the fight song, I -- I just took a knee and then they came out and then we had a pep talk with them and ...

Q. What about the next varsity game, the October 2nd game against Kingston? Do you remember taking a knee and saying a prayer following that game?

A. Yes, I did.

Q. Do you remember thing -- anything specific about the circumstances of your prayer after the October 2nd game?

A. No, nothing.

Q. What about the October 7th junior varsity game reported here as North Mason? Let's strike that.

What about the October 5th game at Kingston? That's a JV game. Do you recall praying after that game?

A. I'm sorry, did you ask me the North Kitsap or [165] Kingston?

Q. The last question I asked was about Kingston.

A. Okay. And then, I'm sorry. What was the next?

Q. Sure. Did you pray following the October 5th game, JV game at Kingston?

A. Yes, I did.

Q. What were the circumstances of your prayer on that game?

A. I did that one as the team was walking off to the bus. We were coming -- we gathered everything and they already did their fight song. And as we were walking across, I was talking to my other coaches and I took a knee and said a prayer, and then continued walking with the team and the coaches.

Q. The next game that's listed here in these exhibits is an October 7th game, which is two days

later against North Mason, a JV game. Do you remember that game?

A. I don't remember that one specifically.

Q. Okay. Do you remember whether or not you took a knee and said a prayer after that game?

A. Yes. I prayed after every game.

Q. So the only game at the 2015 season that you did not say a prayer immediately after the game was the Olympic game?

A. That is correct.

[166] Q. So you said -- did you say a prayer immediately after the football game, the away varsity game at North Kitsap?

A. Yes, I did.

Q. How long were these prayers that you said at each of these games that we've been discussing in between the -since the September 18th game against Olympic?

A. I would say the Port Angeles, Kingston, North Kitsap and North Mason were maybe 10 seconds. The Centralia was a little bit longer, but the rest of them were quick. I'd say under 15 seconds.

Q. Prior to the Centralia game, in between the Olympic game and the Centralia game, did you -- did anybody express any disapproval with your prayer activity at those football games?

A. No, they did not.

Q. Mr. Kennedy, can you go ahead and get Exhibit 12 which is the October 23rd, 2015 letter from the school District?

A. What number was it?

Q. 12.

A. Okay.

Q. I want to look at the second page of that exhibit, the first paragraph. If you look towards the middle of that paragraph, there was language that you were [167] talking about with counsel for the District that says, quote, That until recently, you regularly came to the locker room with the team and other coaches following the game. Do you see that?

A. Yes, I do.

Q. At any point in the 2015 season, did you not go back to the locker room with the team and other coaches following the football game prior to your placed on leave?

A. There was one game, which was the Centralia game, the homecoming that I didn't immediately go, but I joined them shortly after.

Q. And why didn't you immediately go to the locker room after the Centralia game?

A. It was homecoming and there was a lot of media that was there. And I told the head coach and our team that this was their night and I didn't want to distract from that. So I was going to take all the media down to the far end -- the way the stadium was set up, they had fireworks and everything, like, over on this side. Way down here where they've got, like, the porta john and other stuff for the track, I took them all over there and said, this is where I'm going to go. I took them down there, answered a few questions and then I went back up and joined the team.

Q. So you did go back to the locker room, but you [168] had just delayed that for a little bit?

A. Yes, sir.

Q. And can you explain, again, the reason why you had not gone immediately back to the locker room?

A. I cleared it with the coaches that I wanted to make sure that I didn't distract from the kids' night. And there was a whole bunch of cameras and stuff and a lot of distractions and I wanted them to be able to enjoy themselves, and I wanted to remove as much of that as I possibly could.

Q. So would you say that it would be inaccurate to say that you did not come back to the locker room during the 2015 season while you were still a coach?

A. Absolutely. I -- I went there and stayed till the last kid left at every single one of the games.

Q. Mr. Kennedy, why did you not reapply to be an assistant coach in the 2016 football season?

A. There was two reasons.

Q. What were those?

A. Oh, I'm sorry. The first reason is that I was on a suspension and they said I couldn't do anything with the school until I, lack of better words, until I corrected myself or abided by what the school said. And nothing changed. My faith hasn't changed. My commitment to God didn't change. So there was -- it was not a possibility

\* \* \*



**Declaration of N. Gilliam, *Kennedy*  
*v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Nov. 12, 2019)**

I, Nathan Gilliam, declare the following to be true under penalty of perjury under the laws of the state of Washington.

1. I am over the age of 21 and make this declaration based upon personal knowledge.

2. I have been a teacher for 20 years and have been employed as a math teacher in the Bremerton School District since 2005. I was also the head football coach at Bremerton High School for eleven seasons, from 2005 to 2015. I have also coached football at Peninsula High School, Shorewood High School, and Kamiak High School.

3. I first became aware of an issue about Mr. Kennedy's prayers with the football team when I was approached by Athletic Director Jeff Barton in mid-September 2015. Mr. Barton, in essence, told me that Mr. Kennedy should not be praying with the students. I passed Mr. Barton's instructions on to Mr. Kennedy when I saw him later that day.

4. After the next football game, Mr. Kennedy made a post on social media about possibly getting fired for praying. I never told Mr. Kennedy that he would or could be fired because of the issue. I am not aware of anyone from the school district administration who told him, at that point in the course of events, that he would or could be fired over the issue. I did not believe his post accurately described the state of affairs. Mr. Kennedy's post was disappointing to me. We had just recently discussed with the players the importance of being careful with

their social media posts and comments. I believed Mr. Kennedy's post set an example that was contrary to what we wanted the players to learn.

5. The attention that was generated as a result of the issue concerning Mr. Kennedy's prayers caused a tremendous amount of distraction and stress in the football program and detracted from the positive attention that are players and program deserved. I was aware of a large amount of phone calls, letters, emails, social media posts, and other communications that were directed at the school district as a result of the issue. Some of these communications were directed at me individually. Many of these communications were hostile and even threatening.

6. When the issue arose, there began to be much more attendance at games and presence of people around the school who appeared to be from outside of the local community. Many of these people appeared to be of a nature or quality that led me to believe that the environment around the football program was becoming unsafe. As an illustration, after one game, while I was attending to post-game duties on the sidelines, an adult who I had never seen before came up to my face and cursed me in a vile manner. As another illustration, I observed a man in a poorly-maintained camper truck in the school parking lot drinking and with no shirt on. I had never observed a situation like that before and do not believe it was a mere coincidence that it occurred during this controversy.

7. I was very frustrated by the distraction and negative atmosphere that had been created by the attention given to Mr. Kennedy's issue and the way he

chose to address the situation. Other coaches in the program also expressed frustration and displeasure about the situation and divisions in the coaching staff developed. My biggest concern was about how the issue was diverting attention from what should have been a focus on the efforts and achievements of our players.

8. Because of the attention the issue was receiving and because of the experience of having fans, strangers, and media rushing on to the field after a game to where Mr. Kennedy was going to pray, I became concerned about the safety of the players who were in my care. I also noted that students who were not directly in my care, such as cheerleaders and bandmembers, were also in an unsafe situation. Eventually, I became concerned for my own safety. One of the assistant football coaches was also a police officer and, as we headed down to the field for one game, I obliquely asked him what he thought about whether we could be shot from the crowd. Right around that point, I decided that I would resign from my coaching position, although I did not do so until we completed the season. I consider it a great personal loss that I had to withdraw from the program and student-athletes I had been devoted to for eleven years.

9. After the football season, I filled out a document entitled "Bremerton Football Coaching Evaluation Form" addressing Mr. Kennedy's performance. A copy of that document is attached hereto as Exhibit 1. I gave Mr. Kennedy high marks in many categories and lower marks in category #3 "Commitment to Team," category #4 "Character," category #5 "Manageability,"

and category #7 “Relationship with Coaches.” In my comments regarding categories 4 and 5, I wrote “Coach Kennedy put himself before the team many times this season.” In my comments regarding category 7, I wrote “Coach Kennedy’s actions this season drove a wedge in our coaching staff. He created an uneasy environment due to his legal battle.” The marks I gave Mr. Kennedy in categories 3, 4, 5 and 7 were related to the manner in which Mr. Kennedy chose to handle his dispute with the school district.

10. In the Bremerton Football Coaching Evaluation Form I also gave Mr. Kennedy a low mark in category #13 “Program Promotion.” The low mark in this category did not relate to the prayer controversy or the manner in which Mr. Kennedy chose to handle his dispute with the school district. The low score was the result of a controversy that arose concerning Mr. Kennedy’s interactions with a local non-profit entity that had been a long-time supporter of the Bremerton High School football program. Personnel associated with the non-profit entity were unhappy with their experiences with Mr. Kennedy associated with a volunteer event. As a consequence, the non-profit entity reduced its support for and interaction with the football program.

[handwritten: signature]

Nathan Gillam

Signed at [handwritten: Port Orchard], Washington,  
November [handwritten: 12], 2019.

**Declaration of A. Leavell in Support of  
Motion for Summary Judgment, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Nov. 13, 2019)**

I, Aaron Leavell, declare the following to be true under penalty of perjury under the laws of the state of Washington.

1. I am the Superintendent of the Bremerton School District (“District”), am over the age of 21 and make this declaration based upon personal knowledge.

2. I have spent approximately 20 years of my career with the District, serving at various times as a teacher, Assistant Principal, Principal, Assistant Superintendent, and Superintendent. This is my seventh year as Superintendent of the District. At various times with the Bremerton District or other districts, I have served as a football coach, track coach, basketball coach, and junior high athletic director.

3. The District enrolls approximately 5,000 students. It employs approximately 365 teachers and approximately 400 non-teaching personnel, not including substitutes.

4. In 2015, Mr. Kennedy was an assistant football coach in the Bremerton High School football program. I had known Mr. Kennedy since approximately 2009 or 2010. I knew him in his capacity as a coach and also as the husband of Denise Kennedy. Mrs. Kennedy is the Human Resources Supervisor for the District. In this capacity, she is a highly valued employee and a member of the District Leadership Team, which consists of nine District administrators, including myself.

5. I never had any negative motivations toward Mr. Kennedy because of religion. I had no negative feelings about what religion he practices, how religious he is, or whether he wanted to pray at work. I tried to create options that would accommodate his desire to pray and asked him on multiple occasions to engage with me to explore options. I believed he was a positive presence in the football program, and I sympathized with his frustration at not being able to pray in the manner that he wanted. In opposing Mr. Kennedy's position, I was motivated only by the need to comply with the District's constitutional obligations. I believed it was my job to ensure that the conduct of District employees did not violate the constitutional rights of students and other community members.

6. I have years of coaching experience in the Bremerton School District and elsewhere. I have found coaching to be one of the closest possible relationships that an adult can have with a child, apart from the members of the coach's own family. Serving as a coach can be one of the broadest possible responsibilities that a person can undertake. In addition to the physical training for a sport, a coach is responsible for safety, health, group relationships, morality, sportsmanship, character development and more. In the Bremerton District, as well as many other places, a coach can be more important to a child than anyone else at school, and sometimes anyone outside of school as well. The Bremerton School District's understanding of a coach's job is matched by my own understanding and the understanding of virtually every coach I know. The District requires coaches to be mentors and role models and to be aware that they

are constantly being watched and are constantly setting an example when they are in the presence of student-athletes. The District's view is that coaches are not just assigned a job, they are entrusted with developing students into good human beings. I attended Mr. Kennedy's deposition and heard him endorse the ideas that I describe in this paragraph. But even before this controversy arose, I believed that Mr. Kennedy shared this approach to coaching and agreed with the District's expectations.

7. I am familiar with the letter dated April 6, 2016 to the EEOC from the District's lawyer responding to Mr. Kennedy's EEOC complaint. The facts it states, its exhibits and the position of the District it describes are accurate. A copy of the letter is an exhibit to the Declaration of Michael B. Tierney in Support of Defendant's Motion for Summary Judgment ("Tierney Dec."). It and the other exhibits to the Tierney Declaration are either accurate copies of material contained in the District's files, or excerpts from deposition testimony in this case.

8. The issue of Mr. Kennedy's prayers generated substantial publicity. Once the topic arose, the District was flooded with thousands of emails, letters, and phone calls from around the country, many of which were hateful or threatening. At times, the District's telephone system was essentially shut down because of the volume of calls.

9. In the earlier stages of the issue with Mr. Kennedy, the publicity that was generated and the content of comments on social media led the District to have concerns about people joining Mr. Kennedy for prayer or otherwise coming onto the District's football

field immediately after the final whistle. I recognized that the District was not prepared for the substantial amount of effort it would take to secure the field in an orderly manner. For that reason, I decided not to attempt to prevent access to the field at that point. My e-mail of September 18, 2015 (Tierney Dec., Ex. 9) addresses this point. Where my e-mail states “Jeff, when the community comes down onto the field tonight after the game, we will not be able to prevent that from happening.” It refers only to the state of the District’s preparations, not its authority to limit access. There has never been any doubt about the District’s authority to restrict access to its field and other District facilities immediately following football games. The District never had any intention to hold the field open for public access or to create an open public forum. Tierney Dec. Ex. 21; Ex. 22, p. 4.

10. After the issue of Mr. Kennedy’s prayers on the field first arose I met with him and explained the District’s concerns about his prayers creating a constitutional violation. Mr. Kennedy was not happy with the District’s position, but he agreed to cease his prayers on the field. After that agreement, I did not receive any reports of Mr. Kennedy praying on the field until after he did so in a highly publicized incident immediately after the homecoming game on October 16, 2015.

11. In conjunction with meeting with Mr. Kennedy to address the situation, I also issued him a letter of direction dated September 17, 2015. Tierney Dec., Ex. 8. In that letter I acknowledged that the parameters described in the letter did not address every possible scenario, and that he should address



any questions he might have directly to me. Other than one email exchange about setting up a meeting, which was cancelled (Tierney Dec., Ex. 10), Mr. Kennedy did not contact me with any questions about my directions, either in response to my letter of direction or at any further point in the progress of the issue concerning his prayer practice. In subsequent letters to Mr. Kennedy I specifically asked him to engage in an interactive process with me to discuss possible options for an accommodation of his religious practice in addition to the particular accommodations that the District already had proposed. I never received a response from Mr. Kennedy about discussing any possible accommodations and his representatives made it clear that the only accommodation that was acceptable to Mr. Kennedy was the one set forth in their letter of October 14, 2015.

12. On October 2, 2015, I received an e-mail from Mr. Kennedy (Tierney Dec., Ex. 10) stating that he disagreed that his prayers on the field with the team had constituted a violation of the Establishment Clause, and that he was looking into challenging the letter of direction, but that he would continue to follow the letter of direction.

13. On October 14, 2015, the District received a letter from Mr. Kennedy's lawyers asking for an accommodation that would allow him to pray on the football field at the 50-yard line immediately after games, and also specifically asking that he be allowed to pray with students. Tierney Dec., Ex. 27 The letter stated that Mr. Kennedy prayed "on his own time" and "after his official duties as a coach had ceased," and

that he was engaged in “private speech.” The letter stated that, beginning on October 16, 2015, Mr. Kennedy would continue his earlier practice of on-field prayer. The letter was the only statement Mr. Kennedy ever made regarding the accommodation that he requested. At no point after the date of this letter did Mr. Kennedy or his representatives ever modify this request for an accommodation, including never modifying the request that Mr. Kennedy be allowed to pray with students on the field. The understanding I maintained from the date of this letter forward was that Mr. Kennedy had specifically expressed his intention to pray with students on the field.

14. At the same time as the letter of October 14, 2015, and immediately thereafter, Mr. Kennedy and his representatives made numerous appearances and announcements through various forms of media stating Mr. Kennedy’s intent to pray on the field immediately after the homecoming game on October 16, 2015. Copies of some of the articles and media appearances are included as exhibits to the Tierney Declaration.

15. At the conclusion of the homecoming game on October 16, 2015 a large number of people came on to the field, some to pray with Mr. Kennedy. There were spectators jumping the fence and others running among the cheerleaders, band and players. Afterwards, the District received complaints from parents of band members who were knocked over in the rush of spectators on to the field. The District subsequently moved ahead with preparations for securing the field after games. The District made

arrangements with the Bremerton Police Department for security, had signs made and posted, had “robo calls” made to District parents, and otherwise put the word out to the public that there would be no access to the field. The District had received notification from a group that identified itself as a Satanist religion that it intended to conduct ceremonies on the field after football games if others were allowed to. Representatives of that group were on the District’s grounds during a game on October 30, but they did not enter the stands or go on to the field after learning that the field would be secured. Tierney Declaration, Exhibit 18 is a photograph of the Satanist group outside of the stands.

16. On October 23, 2015, I sent Mr. Kennedy a letter (Tierney Dec., Ex. 14) in which I pointed out that Mr. Kennedy was still on duty as a District employee at the time he prayed on the field, and that he remained on duty and responsible for the supervision of the football players until they were dismissed from the locker room after the game. I also pointed out that he was on the football field only by virtue of his employment with the District and that the field was not an open forum to which members of the public were invited after games.

17. Pictures were published in various media of Mr. Kennedy’s post-game prayers. Tierney Declaration, Exhibit 13 is a photograph of Mr. Kennedy apparently praying in the center of a group of players, spectators, members of the public, and news media personnel immediately after the game on October 16, 2015. Tierney Declaration, Exhibit 17 is a photograph of Mr. Kennedy apparently praying in the

bleachers with others after a game on October 30, 2015.

18. A video among the District's football game records shows Mr. Kennedy kneeling and apparently praying after a game on October 26, 2015. Tierney Declaration Exhibit 15 is a still frame from that video of October 26, which video I was shown in my deposition. The still frame shows Mr. Kennedy on the field, kneeling and apparently praying with a group of adults and two school-age children after the game on October 26, 2015.

19. In terms of outward expression, no players appeared to be praying on the field after games during the time in 2015 when Mr. Kennedy temporarily ceased his prayer practice or after he was placed on paid administrative leave. After the issue with Mr. Kennedy arose, I received, either directly or through other District employees, input from some local parents and students who were critical of Mr. Kennedy's actions, and whose children had participated in the team prayers only because they did not wish to separate themselves from the team.

20. I have been acquainted with Dave Boynton for approximately 12 years or more. He is a former member of the Board of Directors of the District. I know him to be friends with Joe Kennedy. The first that I ever heard of an alleged Buddhist chant by Mr. Boynton was in news reports of Mr. Kennedy's EEOC complaint in January 2016. Prior to that point I had never known Mr. Boynton to be a practicing Buddhist. Other than Mr. Kennedy, I have not received any reports of any other BSD employee who has allegedly engaged in readily observable demonstrative religious

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activity, while on-duty in the performance of his or her job, and in the presence of students.

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Aaron Leavell

Signed at [handwritten: Bremerton], Washington,  
November [handwritten: 13], 2019.

**Declaration of J. Barton, *Kennedy*  
*v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Nov. 13, 2019)**

I, Jeff Barton, declare the following to be true under penalty of perjury under the laws of the state of Washington.

1. I am over the age of 21 and make this declaration based upon personal knowledge.

2. I have taught biology, chemistry and other sciences at Bremerton High School for 32 years. I was also the Athletic Director at Bremerton High School from 2011 to 2016. I also formerly coached wrestling and baseball at Bremerton High School for 17 years and coached wrestling for 25 years.

3. I first became aware of an issue about Mr. Kennedy's prayers with the football team when I was approached by the Bremerton High School Principal, John Polm in mid- September 2015. Mr. Polm told me about a comment from another school relating to a Bremerton football coach praying with students on the field. He asked me to look into it and I subsequently discussed it with Head Coach Nate Gillam and reiterated with him the expectation that coaches should not be praying with students. After the next football game, Mr. Kennedy made a post on social media about possibly getting fired for praying. I never told Mr. Kennedy or Mr. Gillam that Mr. Kennedy could be fired because of the issue. I am not aware of anyone from the school district administration who told him, at that point in the course of events, that he would or could be fired over the issue. I am not aware of anyone who made that statement to Mr. Kennedy.

4. After the issue with Mr. Kennedy arose and the District directed him to cease praying on the field around the students, I was approached by several students and parents who expressed thanks for the District's actions and described how Mr. Kennedy's prior practice had put them or their children in awkward situations where they did not feel comfortable declining to join with the other players in Mr. Kennedy's prayers.

5. On Mr. Kennedy's evaluation for 2015, I wrote "Never came in after numerous requests and contacts." I wrote this because the evaluation process required the employee to come in and receive and discuss the evaluation, and Mr. Kennedy never came in to do so despite my leaving him multiple messages asking him to come in.

[handwritten: Jeff Barton]

Jeff Barton

Signed at [handwritten: Bremerton], Washington,  
November [handwritten: 13], 2019

**Declaration of J. Polm in Response to  
Motion for Summary Judgment, *Kennedy*  
*v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Dec. 17, 2019)**

I, John Polm, declare the following to be true under penalty of perjury under the laws of the State of Washington.

1. I am the Superintendent of the Port Townsend School District. In 2015, I was the Principal of Bremerton High School. I am over the age of 21 and make this declaration based upon personal knowledge.

2. I am aware that Mr. Kennedy is contending that he prayed at midfield immediately after some Bremerton High School football games between September 18 and October 16, 2015. At the time, in 2015, I was not aware of Mr. Kennedy praying on those occasions. It was not until after August 2019 that I learned he was contending he prayed on those occasions.

3. My understanding at the time in 2015 was that Mr. Kennedy refrained from praying at midfield immediately after the game on September 18, 2015, and that he did not do so again until he announced his intention to resume his prior practice beginning with the game on October 16, 2015.

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John Polm

Signed at [handwritten: Port Townsend], Washington,  
December [handwritten: 17], 2019



**Declaration of N. Gillam in Response to  
Motion for Summary Judgment, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Dec. 17, 2019)**

I, Nathan Gillam, declare the following to be true under penalty of perjury under the laws of the state of Washington.

1. I am over the age of 21 and make this declaration based upon personal knowledge. I was the head football coach at Bremerton High School for eleven seasons, from 2005 to 2015.

2. I am aware that Mr. Kennedy has testified in his deposition that, from 20 yards away, I “mouthed” to him the words “they’re going to fire you,” and that this occurred after a Bremerton High School football game on approximately September 11, 2015.

3. I never said or “mouthed” to Mr. Kennedy that he might be fired, either on September 11 or any other time. I do not know why he would claim that I did so.

4. The substance of my knowledge on September 11 was that I had passed on to Mr. Kennedy the instructions from Athletic Director Jeff Barton that Mr. Kennedy should not lead prayers with the students. Mr. Barton had not said anything about Mr. Kennedy being fired. I had no authority to fire Mr. Kennedy. At the time, I could not even have said with certainty what the process would have been for firing an assistant coach.

5. At some point later, on the same night as the football game, Mr. Kennedy issued a Facebook post saying that he might have gotten fired from coaching that night. The Facebook post went viral and started

a large controversy. I do not know why Mr. Kennedy issued the Facebook post. Although Mr. Kennedy and I discussed the Facebook post later on, he never told me that he thought I had “mouthed” those words to him, and he has never made that allegation to me since then. The first I learned of this allegation was when I heard he had made the allegation in his deposition in this case.

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Nathan Gillam

Signed at [handwritten: Bremerton], Washington,  
December [handwritten: 17], 2019

**Declaration of A. Leavell in Response to  
Motion for Summary Judgment, *Kennedy*  
*v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Dec. 18, 2019)**

I, Aaron Leavell, declare the following to be true under penalty of perjury under the laws of the State of Washington.

1. I am the Superintendent of the Bremerton School District (“District”), am over the age of 21 and make this declaration based upon personal knowledge.

2. I am aware that Mr. Kennedy is contending that he prayed at midfield immediately after some Bremerton High School football games between September 18 and October 16, 2015. At the time, in 2015, I was not aware of Mr. Kennedy praying on those occasions. It was not until his deposition in August 2019 that I learned he was contending he prayed on those occasions.

3. My understanding at the time in 2015 was that Mr. Kennedy refrained from praying at midfield immediately after the game on September 18, 2015, and that he did not pray at midfield immediately after the game again until he announced his intention to resume his prior practice beginning with the game on October 16, 2015.

4. The sequence of events that happened in 2015 began with a tremendous amount of attention, communications and publicity arising out of a Facebook post by Mr. Kennedy that went viral around September 11, 2015. The District then began an investigation into Mr. Kennedy’s prayer practices with the football team.

5. The investigation led to discussions with Mr. Kennedy and directions from me that included a letter of direction dated September 17, 2015 (Doc. 64-8). After those discussions and the letter, I believed Mr. Kennedy understood that he had been directed to cease his demonstrative prayers on the field immediately after games.

6. On September 18, 2015, the day after my letter of instruction to Mr. Kennedy, Bremerton High School played a football game. I gave directions to have an administrator listen to Mr. Kennedy's post-game speech to the football team during the closing ceremonies. The administrator observed that Mr. Kennedy's speech was secular in nature and positive.

7. On September 19, a news article contained a report about Mr. Kennedy's secular talk and also described how, nearly an hour after the game, Mr. Kennedy returned to the field and prayed after the players and fans had left. I had no issue with Mr. Kennedy praying in that manner.

8. After seeing the news report, I believed the District and Kennedy were in agreement, and that Mr. Kennedy understood and was following my directions. I believed at the time that the issue had been resolved and I did not ask any administrators to further monitor Mr. Kennedy's behavior.

9. During the course of the controversy concerning Mr. Kennedy's prayers, the District was contacted by several groups, including a satanist group, that wished to conduct activities of some kind on the football field immediately after games. The District did not allow them access to the field.

10. Policy 2340 “Religious-Related Activities and Practices,” like most District policies, is a model policy developed by the Washington State School Directors’ Association. Among its other services, WSSDA drafts policies and makes them available for adoption by local school boards.

11. To my knowledge, there has never been any issue that has arisen in the District concerning any employee wearing a yarmulke, a cross or other symbol, or saying grace at a meal.

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Aaron Leavell

Signed at [handwritten: Bremerton], Washington,  
December [handwritten: 18], 2019

**Declaration of J. Barton in Response to  
Motion for Summary Judgment, *Kennedy  
v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Dec. 18, 2019)**

I, Jeff Barton, declare the following to be true under penalty of perjury under the laws of the State of Washington.

1. I am over the age of 21 and make this declaration based upon personal knowledge. I was the Athletic Director at Bremerton High School in 2015.

2. I am aware that Mr. Kennedy is contending that he prayed at midfield immediately after some football games between September 18 and October 16, 2015. At the time, in 2015, I was not aware of Mr. Kennedy praying on those occasions. It was not until after August 2019 that I learned he was contending he prayed on those occasions.

3. My understanding at the time in 2015 was that Mr. Kennedy refrained from praying at midfield immediately after the game on September 18, 2015, and that he did not pray at midfield immediately after a game again until he announced his intention to resume his prior practice beginning with the game on October 16, 2015.

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Jeff Barton

Signed at [handwritten: Bremerton], Washington,  
December [handwritten: 18], 2019

**Transcript Excerpts From Motion Hearing,  
*Kennedy v. Bremerton Sch. Dist.*, No. 16-cv-05694  
(W.D. Wash. Feb. 12, 2020)**

\* \* \*

[15] That tees up the question for the Court. It is not a factual issue. The question is: Is that right? Was the District correct when it took that position?

That leads us to the free speech claims at issue, which is the *Eng* test. There is no dispute that we are in *Eng* land. *Eng* has five factors, but I think -- although the District has taken inconsistent positions in its two briefs, I think we are only fighting about two of these factors.

No. 1 was on the matter of public concern. No dispute that religious speech is on that subject. That's what the Ninth Circuit *Johnson* case says.

Here we are at *Eng* Factor 2: In what capacity was Coach Kennedy speaking when he engaged in his demonstrative religious conduct at the conclusion of the games? That is a practical -- the Ninth Circuit in its opinion in this very case said that's a practical, fact-intensive inquiry. It doesn't depend on root job descriptions. You have to look at what does this person do.

Under *Lane vs Franks*, the question is whether the speech at issue is ordinarily within the scope of the employee's job duties. So as a coach, I think if you look at it in that way, no, right? Praying -- saying your own silent prayer is not within the scope of what a coach normally does.

What this Court looked at, and what the Ninth Circuit looked at at the early preliminary injunction

phase is, well, [16] look, a coach is a role model, right? The coach is visible. The young men on the team are looking up to the coach. There is no dispute about that. That's precisely why Coach Kennedy wants to do what he does. He recognizes that, and frankly everybody who worked with him recognize --

THE COURT: It is subtly coercive. That's the Rubicon that we wrestle with is, is that coercive.

MR. ANDERSON: I think that comes in at *Eng* Factor 4, right? That coercion right is the establishment clause. I think the question right now is when he knelt to say a silent, personal prayer, in what capacity is he speaking?

The question under *Lane* is not was he officially on the clock or not. Otherwise, that would mean, contrary to *Tinker*, any time you show up for work as a public employee, you don't -- your speech is unprotected. That's not the law.

I think that is what Justice Alito is highlighting. We can't read job duties so broad that any time a public employee is visible to somebody else, that that means they cannot -- their speech is unprotected no matter what. That would prohibit bowing your head, folding your arms, saying a prayer for a meal if you happened to be in the school cafeteria and students see you.

And to come to the coercion point that Your Honor hit, I think what we know from the timeline -- this is why I spent so much time on the timeline -- there is no coercion involved

\* \* \*