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Employee Religious Activities in Our Schools

New Supreme Court Decision Issued and What School Officials Should Know Now

Yesterday, the United States Supreme Court issued what has been a long-awaited decision in the area of permissible religious activities by public school employees. In *Kennedy v. Bremerton School District* (597 U.S. __ (2022)), a Washington state high school football coach sued the district after being released from his coaching position in 2015 for participating in what the Court concluded were private religious exercises, specifically, three sessions of post-game, 50-yard line prayers.

The facts surrounding the case are not particularly unique or otherwise scandalous, but they may be instructive on how public school employers can apply this case to their own circumstances. As an assistant coach, Kennedy led post-game prayers on the 50 yard line after games, with members of his own football team as well as with coaches and members of opposing teams. No students were required or encouraged to participate, although many did. The district directed him to stop and Kennedy complied with the directives around leading students in prayer, however, Kennedy purposefully and publicly decided to continue his practice of kneeling in personal prayer on the 50-yard line of the football field after games. The prayers took place during a time when the team's coaches were still on duty but allowed to attend to personal affairs. No students were present during these prayers, except from the other team. In response, the school district disciplined Kennedy on grounds that his conduct was not only disruptive and a violation of its policies and prior directives but it put the district at risk of violating the Establishment Clause of the First Amendment as Kennedy was engaging in prayer while he was still on duty at a public school activity.

In a 6-3 decision, the Court held that the district's actions violated the Free Exercise and Free Speech clauses of the First Amendment. In doing so, the Court wholesale rejected a long-standing line of cases upon which public school districts around the country have relied to evaluate religious activities and speech of public employees. In doing so, the Court focused on whether (1) the prayer was made as a public employee or private citizen and (2) whether it was impermissibly coercive on students. Finding the prayer to be private speech that had no coercive effect on students, the Court held that the coach's conduct was protected by the First Amendment.

Although this case involved a walk-on coach engaged in activities at an after-school athletics event, the decision has far-reaching implications for permissible regulation of religious activities and speech of public

school employees both during and outside of the school day. We anticipate that subsequent cases will serve to flesh out what restrictions on governmental employee, and more specifically public school employee, religious speech/activities will be permitted.

To the extent you may be relying on prior legal opinions regarding employee religious speech and/or activities in your schools—particularly opinions that cite to the so-called "Lemon" test—those opinions may now be outdated. Accordingly, we strongly recommend that you review any current policies and internal practices or procedures to ensure that they are consistent with the Court's decision and reasoning, consulting with legal counsel as necessary.

If you have any questions regarding this decision and how it affects your agency, please call one of our six offices.

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