



Written by [Bob Adelman](#) on March 10, 2020

## Football Coach Fired for Praying Likely To Get Case Reviewed by Supreme Court

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U.S. District Court Judge Ronald Leighton [ruled](#) against Bremerton High School's football coach Joe Kennedy last week, saying that "although the Court is sympathetic to Kennedy's desire to follow his beliefs, the former must give way to the latter in this case." The "latter" to which Leighton referred is the right of Bremerton High School to fire the coach when he took 15 seconds at the end of a football game to pray for his players on the 50-yard line.



Kennedy coached the school's JV football team for seven years, and for seven years he took time after each game to pray for his players. And for seven years nobody minded. Nobody said anything. Nobody sued. Nobody even threatened to sue.

But when a school administrator paid a public compliment for how the coach was positively impacting the lives of his players, the school board told Kennedy to stop. When he didn't, the board decided not to renew his contract.

Kennedy enlisted the help of First Liberty, a non-profit public-interest law firm that specializes in such First Amendment cases. Together they sued the board, claiming it violated his First Amendment-protected rights. And they lost.

So they appealed to the Ninth Circuit Court of Appeals. And they lost again. So they appealed to the Supreme Court. And lost, but with a caveat: There were enough loose ends to the case that needed to be resolved at the lower court's level to keep the court from reviewing Kennedy's claim.

In the Supreme Court's denial in January 2019, Justices Samuel Alito, Clarence Thomas, Neil Gorsuch, and Brett Kavanaugh added a statement to the public record, explaining that "important unresolved factual questions would make it very difficult if not impossible at this stage to decide the free speech question that [Kennedy] asks us to review."

The justices then excoriated the Ninth Circuit Court's reasoning: "The Ninth Circuit's opinion applies our decision in *Garcetti v. Ceballos* to public school teachers and coaches in a highly tendentious way."

That decision ruled that statements made by public employees in the normal conduct of their official duties are not protected by the First Amendment. It ruled that public employees are not speaking as citizens when they are speaking to fulfill a responsibility of their job. It held that the First Amendment does not prevent employees from being disciplined for making statements that are made "pursuant" to



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their professional duties.

But the Ninth Circuit stretched that ruling out of all recognition, according to the justices:

According to the Ninth Circuit, public school teachers and coaches may be fired if they engage in any expression that the school does not like while they are on duty, and the Ninth Circuit appears to regard teachers and coaches as being on duty at all times from the moment they report for work to the moment they depart, provided that they are within the eyesight of students.

Under this interpretation of *Garcetti*, if teachers are visible to a student while eating lunch, they can be ordered not to engage in any “demonstrative” conduct of a religious nature, such as folding their hands or bowing their heads in prayer.

And a school could also regulate what teachers do during a period when they are not teaching by preventing them from reading things that might be spotted by students or saying things that might be overheard.

This Court certainly has never read *Garcetti* to go that far.

The justices went even further:

What is perhaps most troubling about the Ninth Circuit’s opinion is language that can be understood to mean that a coach’s duty to serve as a good role model requires the coach to refrain from any manifestation of religious faith — even when the coach is plainly not on duty. I hope [wrote Alito with the consent of the other three justices] that this is not the message that the Ninth Circuit meant to convey, but its opinion can certainly be read that way.

Following the ruling last week by Judge Leighton, Mike Berry, Kennedy’s lead attorney with First Liberty, said, “For almost five long years Joe has had to miss coaching the game he loves. Joe has fought — first as a U.S. Marine, then as a coach — to prove that every American has the right to engage in individual religious expression, including praying in public, without fear of getting fired. He knows this fight isn’t over.”

Accordingly, First Liberty is preparing for a rehearing at the Ninth Circuit. If that court rebuffs Kennedy once again, then it’s likely that the Supreme Court will take another — and more likely more sympathetic — look at Coach Kennedy’s claim.

But the ground has shifted since the Ninth Circuit made its initial ruling back in 2017: It was an Obama court, which boasted having more of its rulings overturned at the Supreme Court than any other circuit court in the land.

But now there’s a new sheriff in town. The far-left *Los Angeles Times* expressed its dismay at what that new sheriff has been able to accomplish in just the last three years: “Because of Trump’s success in filling vacancies, the San Francisco-based [Ninth] circuit, long dominated by Democratic appointees, has suddenly shifted to the right, with an even more pronounced tilt expected in the years ahead.”

As a result, Kennedy’s case may not be heard by the Supreme Court after all. Explained Kelly Shackelford, chief counsel for First Liberty:

The Supreme Court seems to understand that banning all coaches from praying just because they can be seen is wrong and contradicts the Constitution. With the latest ruling by the District Court, we’re now on our way back to the Ninth Circuit and possibly the U.S. Supreme Court to give the Court another opportunity to protect the right of every American to engage in private religious



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expression, including praying in public, without fear of getting fired.

The *Los Angeles Times* claims that Trump has “flipped” the Ninth Circuit. He has not. What he is doing, with the confirmation of the U.S. Senate, is returning that court, and others, to its proper role of understanding the Constitution as it was originally written and intended to be understood by the Founders. That’s the real lament of the *Times*, and a cause for rejoicing by those who understand how the Constitution was intended to protect the God-given rights of every citizen, including Bremerton High’s football coach, Joe Kennedy.

*Image: jgareri via iStock / Getty Images Plus*

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