



Coach Kennedy Tries for Second Bite of Supreme Court Apple

You may remember that, in 2015, Washington state high school football coach Joe Kennedy [was suspended](#) for refusing to follow a directive from the Bremerton School District to stop kneeling on the fifty yard line in silent prayer after each game. This was a practice that Coach Kennedy had quietly engaged in since 2008. The Seattle Times [reported that](#) Kennedy sued the district, not asking for any monetary compensation. According to his attorney, all he wanted was to pray “briefly and quietly,” after the games.

Kennedy lost his case at the Federal District Court. With the help of [First Liberty Institute](#), he appealed this decision to the Ninth Circuit Court of Appeals. In August of 2017, [the Ninth Circuit Court refused to issue an injunction against the district](#), stating that when he prayed after a game he “spoke as a public employee, not as a private citizen,” and that, “he took advantage of his position to press his particular views upon the impressionable and captive minds before him.” Kennedy and First Liberty appealed this decision to the Supreme Court.

On January 29, 2019, the Supreme Court refused to hear Coach Kennedy’s case. Although the Court is not required to explain their reasoning when they “deny certiorari,” four of the justices, Alito, Thomas, Gorsuch and Kavanaugh, [entered a statement written by Alito](#) explaining why they voted against hearing the case. This is where Coach Kennedy’s case gets very interesting.

The statement explained that the four justices felt compelled to deny the hearing because the District Court, which initially heard the case, had failed in its responsibility to sort out the facts. They believed there were two reasons the school district gave for

their action and the court left it unclear whether Kennedy was suspended for leaving his team unsupervised during the time he was praying, or if that time was actually a time when he was “on duty only in the sense that his workday had not ended and that his prayer took place at a time when it would have been permissible for him to engage briefly in other private conduct, say, calling home.”

Alito and the three other justices went on to also castigate the Ninth Circuit Court of Appeals saying, “The decision of the Ninth Circuit was even more imprecise on this critical point.”

Alito’s statement then goes on to weigh in on other flaws that they saw in the Ninth Circuit’s Court reasoning for denying the case, including:

“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.”

And,

“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 that this is not the message that the Ninth Circuit meant to convey, but its opinion can certainly be read that way.”

And, taking things even further, Alito took the Ninth Circuit to task for being critical of Kennedy’s private actions after he had been terminated:

“The court criticized him for “his media appearances and prayer in the BHS bleachers (while wearing BHS apparel and surrounded by others).” This conduct, in the opinion of the Ninth Circuit, “signal[ed] his intent to send a message to students and parents about appropriate behavior and what he values as a coach.” But when petitioner prayed in the bleachers, he had been suspended. He was attending a game like any other fan. The suggestion that even while off duty, a teacher or coach cannot engage in any outward manifestation of religious faith is remarkable.”

Many read this language as urging Kennedy and his legal team to take another shot at this case under slightly different grounds so the Supreme Court can rule on the religious freedom issues. This is exactly what Kennedy has done.

The case was reintroduced at the Federal District Court level and earlier this month the District Court once again denied Kennedy's request. However this time, unlike the first time around, they provided a [detailed opinion](#) explaining the facts and their reasoning.

Kennedy's attorney has said that they are [planning to once again appeal the decision to the Ninth Circuit Court of Appeals](#). One might expect that this will result in a second denial at the Ninth Circuit Court, but maybe not.

There is [some speculation](#) that, because President Trump has been very assertive in appointing judges to the federal courts, [the Ninth Circuit Court of Appeals has undergone a shift](#) which could lead to a different outcome. This court is responsible for ruling on cases emanating from the west coast of the United States and has for many years been considered very liberal. However, Trump has appointed 10 new judges out of the 29 active judges on the court. According to the Los Angeles Times, this prompted one judge on the court to say, "Trump has effectively flipped the circuit," and another to say, "Ten new people at once sends a shock wave through the system."

So perhaps the Ninth Circuit will rule that Coach Kennedy should be allowed to quietly pray on the football field after games. If not, it is likely that Kennedy will appeal again to the Supreme Court. If there is a fifth judge who would side with the four who signed the statement, Coach Kennedy may have his day before the highest court in the land. It seems possible that Chief Justice Roberts could side with the four who clearly want to sink their teeth into this issue. However, Roberts has at times seemed to push for slow change and moderate views, perhaps to keep the court from being viewed as partisan. It will be interesting to see how this breaks. We will keep you informed.

Regardless of how it concludes, there are some lessons for Christian teachers that are apparent.

First, we should be thankful that four of the nine justices on the Supreme Court clearly support public school teachers being free to live out their faith in view of students. Of course, this does not mean proselytizing students, but it does mean that these four justices think a teacher should not be forced to hide their personal faith from the view of students. However, unless there is a fifth justice who will side with them this view will

remain in the minority. It would be good for us to pray for the other justices and especially Chief Justice Roberts, that they will endeavor to ensure that public employees will not have their personal religious freedoms unnecessarily hindered.

Second, it does appear that Coach Kennedy has not tried to overtly proselytize students in his care. His action of personal prayer, while done in public view, has not shown any intent to coerce or shame others into following his lead. We should pray for Coach Kennedy in his long pursuit to be able to coach and pray in public.

And third, we can be thankful that Coach Kennedy has been a good role model for education employees on how to deal with issues of conscience when we believe our employers are abridging our religious liberties. He seems to have been careful to not behave rashly in raising his objections. He has secured good counsel and, while he has been quite open in sharing his convictions with the media and politicians, [including President Trump](#), he has not forced unnecessary public showdowns.

The media attention to this issue led to quite a bit of public hoopla after some games. And Kennedy, after he had secured legal counsel, continued his practice of prayer on the field until he was placed on paid administrative leave by the district. If you find yourself in a similar situation as Coach Kennedy, where you feel convicted that you must take action that is contrary to a directive of your school administration, it is important that you get legal advice before moving forward alone in what could result in termination for insubordination. Such action could weaken your claim that the district violated your freedom of religion. In such a situation it is essential that you [contact CEAI](#) so you can secure effective counsel.

It is not likely that many of us will be called to proclaim our faith through the type of action that Coach Kennedy took. However, we each have a different call on our life and can be thankful that the Lord will bind each of our calls together into the message that the world needs. CEAI exists to support you as you live out your call in the schools.

Please share your thoughts on this column that you would like other readers to see by entering them in the form below. Personal comments can be sent to JMitchell@ceai.org. John Mitchell is the Washington, D.C. Area Director for Christian Educators Association International.