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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

JOSEPH A. KENNEDY,

*Plaintiff,*

v.

BREMERTON SCHOOL DISTRICT,

*Defendant.*

CASE NO.

**COMPLAINT**

**JURY DEMAND**

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-

1 duty school employees. Board Policy 2340, Aug. 13, 1992, Ex. A. It also complies with BSD's  
2 initial letter to Coach Kennedy, which prescribed certain guidelines for his religious expression  
3 while reaffirming that "you and all District employees possess fundamental free exercise and  
4 free expression rights under the First Amendment." Letter to Coach Kennedy, Sept. 17, 2015,  
5 Ex. B, at 2.

6 4. BSD publicly admitted that there is "*no evidence*" that students have ever been  
7 "coerced" to pray with Coach Kennedy. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 1  
8 (emphasis added). BSD also admitted that Coach Kennedy has never "actively encouraged, or  
9 required, [student] participation" in any religious activity. Letter to Coach Kennedy, Sept. 17,  
10 2015, Ex. B, at 2.

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

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

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

24 8. When Coach Kennedy engaged in the brief, quiet prayer that is required by his  
25 faith after the next BHS football game, BSD suspended him. The District later retaliated against  
26 Coach Kennedy by giving him a poor performance evaluation—for the first time in his entire  
27 BHS coaching career—and then firing him because he purportedly "failed to follow district  
28 policy." BSD Coaching Evaluation Form, Nov. 20, 2015, Ex. J.





1           25.     Upon information and belief, BSD initially hired Coach Kennedy in part based on  
2 the strength of his leadership, his teamwork, and his experience mentoring student athletes.

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

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

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

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

19           29.     After the game is over, and after the players and coaches from both teams have  
20 met to shake hands at midfield, Coach Kennedy feels called to pause on the playing field to  
21 engage in private religious expression. He takes a knee at the 50-yard line and offers a brief,  
22 quiet prayer of thanksgiving for player safety, sportsmanship, and spirited competition. That  
23 prayer lasts approximately 30 seconds.

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

27           31.     Because Coach Kennedy’s prayer lifts up the players and recognizes their hard  
28 work and sportsmanship during the game, his sincerely held religious beliefs require him to pray

1 on the field where the game was played. His private religious expression is outside the ordinary  
2 scope of his responsibilities as a BSD employee.

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

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

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

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

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

27 37. At all times, as BSD concedes, “[e]ach activity has been voluntary,” and there is  
28 “no evidence” that students have ever been “coerced” to pray with Coach Kennedy. Letter to

1 Coach Kennedy, Sept. 17, 2015, Ex. B, at 1; BSD Statement and Q&A, Oct. 28, 2015, Ex. G,  
2 at 1. Indeed, BSD has admitted that Coach Kennedy has never “actively encouraged, or  
3 required, [student] participation” in any religious activity. Letter to Coach Kennedy, Sept. 17,  
4 2015, Ex. B, at 1.

5 38. According to 2010 census data, approximately 73% of the people living in Kitsap  
6 County do not associate with a specific religion, making the Kitsap County population one of the  
7 least religious in the State. Association of Religion Data Archives, Kitsap County Membership  
8 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).  
9 But in the eight years since Coach Kennedy began working at BHS, no student, parent, or  
10 member of the community ever complained about his private religious expression after football  
11 games. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3–4.

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

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

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

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

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

28 43. Upon information and belief, BSD became aware of Coach Kennedy’s post-game

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

4 44. On September 17, 2015, BSD Superintendent Aaron Leavell sent Coach Kennedy  
5 a letter announcing that BSD "has been conducting an inquiry into whether District staff have  
6 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:

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

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

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

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

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

1 discernable as religious activity) if students are also engaged in religious conduct, or it should  
2 occur while students are not engaging in such conduct.” *Id.*

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

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

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

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

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

25 52. In his October 14, 2015 letter, Coach Kennedy formally requested a religious  
26 accommodation under Title VII of the Civil Rights Act that would affirm his right to engage in a  
27 brief, quiet prayer at the 50-yard line at the conclusion of BHS games. *Id.* at 1, 6. Coach  
28

1 Kennedy also informed BSD that, beginning on October 16, 2015, he would continue his  
2 practice of saying a brief, private prayer following BHS football games. *Id.* at 6.

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

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

10 55. On October 23, 2015, just hours before the football game scheduled for that night,  
11 Superintendent Leavell sent Coach Kennedy a second letter that “emphasize[d] [his] appreciation  
12 for [Coach Kennedy’s] efforts to comply with the September 17 directives,” and acknowledged  
13 that Coach Kennedy’s religious expression on October 16 was “fleeting.” Letter to Coach  
14 Kennedy, Oct. 23, 2015, Ex. E, at 1–2.

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

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

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

26 59. BSD’s October 23, 2015 letter further suggested that that Coach Kennedy should  
27 abandon his typical practice and instead leave the field and go to a “private location within the  
28 school building, athletic facility or press box” in order to pray. *Id.* at 3. That invitation belies

1 any concerns about post-game supervision, since traveling to a location dozens or hundreds of  
2 yards away would obviously take Coach Kennedy away from his players for a significantly  
3 longer period of time.

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

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

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

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

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

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

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

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

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

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

21           68.     In November 2015, however, Coach Kennedy received a poor performance  
22 evaluation for the first time in his BHS coaching career. BSD Coaching Evaluation Form, Nov.  
23 20, 2015, Ex. J. The November 2015 evaluation recommended that Coach Kennedy not be  
24 rehired because he allegedly “failed to follow district policy” regarding religious expression and  
25 allegedly “failed to supervise student-athletes after games.” *Id.*

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

27           70.     Although BSD attributed its adverse employment actions to Coach Kennedy’s  
28 alleged failure to follow district policy and supervise players, the District’s own correspondence

1 makes clear that it acted on the basis of Coach Kennedy’s religious expression. *See* BSD  
2 Statement and Q&A, Oct. 28, 2015, Ex. G, at 1 (“This action was necessitated” because Coach  
3 Kennedy failed to “refrain from engaging in overt, public religious displays on the football field  
4 while on duty as a coach”); Letter to Coach Kennedy, Oct. 28, 2015, Ex. F (Coach Kennedy  
5 “engag[ed] in overt, public and demonstrative religious conduct while still on duty as an assistant  
6 football coach”).

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

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

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

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

17 **VI. CAUSES OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19          95. Specifically, the District’s conduct violates 42 U.S.C. § 2000e-2(a) and 42 U.S.C.  
20 § 2000e-(j).

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

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

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

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

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

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

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

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

7                           **VII. REQUEST FOR ATTORNEYS’ FEES AND COSTS**

8           102. Coach Kennedy is entitled to recover reasonable attorneys’ fees and costs under  
9 42 U.S.C. § 1988(b), in an amount to be proven at trial.

10          103. Coach Kennedy is likewise entitled to attorneys’ fees and costs under 42 U.S.C.  
11 § 2000e-5(k), in an amount to be proven at trial.

12                           **VIII. JURY TRIAL DEMAND**

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

14                           **PRAYER FOR RELIEF**

15          Coach Kennedy prays that this Court enter Judgment:

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

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- 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.

1 Dated: August 9, 2016

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27 \* *Pro hac vice* application pending.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 9, 2016, the foregoing document was served via electronic  
3 filing on all counsel of record in this case.

4 /s/ Jeffrey Paul Helsdon  
5 Counsel for Plaintiff

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