HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH A. KENNEDY,

Plaintiff,

v.

BREMERTON SCHOOL DISTRICT,

Defendant.

Case No. 3:16-CV-05694-RBL

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Noted on Motion Calendar: December 6, 2019

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Coach Joseph A. Kennedy is a devout Christian and was a well-respected football coach at Bremerton High School ("BHS"). For most of his career, these two identities were complementary. But after many seasons without incident, Bremerton School District forced Coach Kennedy to choose between his job and his faith, in violation of the First Amendment's guarantees of freedom of speech and free exercise of religion. Coach Kennedy chose his faith and, as a result, he is no longer a coach. Because the District's actions violate the Constitution as well as Title VII, the Court should grant summary judgment for Coach Kennedy.

Discovery in this case has shown that for years, Coach Kennedy engaged in brief, silent prayers on the fifty-yard line, thanking God for his players and for the privilege of being a part of their lives. In doing so, he neither pressured players to participate, nor neglected his responsibilities as a coach. In fact, for most of Coach Kennedy's career, no one even noticed he was praying, let alone raised any concerns about his practice. That all changed in 2015. At first, the District instructed Coach Kennedy not to involve students in his prayers, and Coach Kennedy dutifully complied with this direction. Then the District moved the goalposts. According to the District, even a brief, silent, personal prayer that is physically separated from players and lasts all of 15 seconds—the amount of time required to kneel and tie a shoe—was forbidden. This was despite the District's concession that Coach Kennedy's religious expression was "fleeting," Ex. 1 (10/23/15 Ltr. District to Kennedy) at 2[1], that there was "no evidence" students had ever been "coerced" to pray with Coach Kennedy, Ex. 2 (10/28/15 Bremerton Statement and Q&A) at 1, and that he never "actively encouraged, or required, [student] participation" in any religious activity, Ex. 3 (9/17/15 Ltr. District to Kennedy) at 1. When Coach Kennedy continued to pray as his religious beliefs required, the District suspended him and ultimately gave him a negative performance review—the first of his career. He has not been permitted to coach since.

[1] The exhibits referenced herein are included as attachments to the *Declaration of Devin S. Anderson in Support of Plaintiff's Motion for Summary Judgment*, filed contemporaneously herewith.

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The First Amendment protects both the "freedom of speech" and the "free exercise" of religion. The District, however, violated these constitutional guarantees, which should have shielded Coach Kennedy's private, personal conduct from government sanction. As the District readily admitted in discovery, the sole reason for its action against Coach Kennedy was its belief that his conduct violated the Establishment Clause. That is incorrect—no reasonable observer would perceive Coach Kennedy's brief, private prayers as school-endorsed. Indeed, such an application of the District's policy on "Religious-Related Activities and Practices" would prohibit on-duty employees from praying over lunch in the cafeteria, making the sign of the cross, wearing a yarmulke or headscarf, or engaging in any other visible religious conduct when they happen to be in the potential eyesight of students. Not only does the Constitution not require such a policy—it affirmatively prohibits it. As the Supreme Court has made clear, the government cannot force school employees to "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). And if there were any doubt, Title VII of the Civil Rights Act of 1964 adds another layer of protection for Coach Kennedy's right to practice his faith without fear of his employer's sanction.

Following the Ninth Circuit's remand in this case, discovery has confirmed that Coach Kennedy engaged in constitutionally protected conduct, and that the District lacked any sound justification for suspending Coach Kennedy. Because the District acted in contravention of law, this Court should grant summary judgment for Coach Kennedy and allow him to resume doing what he loves—coaching the students of BHS.

II. STATEMENT OF FACTS

Coach Kennedy is a practicing Christian who, from 2008 until 2015, served as an assistant coach for BHS's football teams. Ex. 4 (Kennedy Decl.) ¶¶ 2, 10. Fellow coaches described him as "kid-centered, eager as a coach . . . well liked by parents," "honest," "reliable," and "diligent." Ex. 5 (BHS Principal Dep.) at 42:23–43:9; Ex. 6 (Asst. Coach Saulsberry Dep.) at 14:4–7; Ex. 7

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(Asst. Coach Boynton Dep.) at 12:12–20. Coach Kennedy was "quite often [one] of the first [coaches] there . . . [and] always one of the two or three to leave at the end of the day. He very rarely missed practice, and he was always good about showing up for games and working with the kids and dealing with parents." Ex. 7 (Asst. Coach Boynton Dep.) at 12:14–20. Aaron Leavell, the District's superintendent, testified that prior to September 2015, "nothing was brought to [his] attention" regarding concerns with Kennedy's performance as a coach. Ex. 9 (District 30(b)(6) Dep.) at 58:16–59:4, 60:15–21. Coach Kennedy consistently received high marks on his yearly evaluations. Ex. 8 (Kennedy Evaluations).

Coach Kennedy's personal religious beliefs require him to give thanks through prayer at the conclusion of each game "for what the players had accomplished and for the opportunity to be part of their lives through the game of football." Ex. 4 (Kennedy Decl.) ¶ 11. Ever since he first became a coach in 2008, Coach Kennedy knelt at the fifty-yard line following the post-game handshake with the opposing team to offer a short, personal prayer. *Id.* ¶ 12. These prayers lasted between 10–20 seconds. Ex. 10 (Kennedy Dep.) at 55:12–16, 166:5–11. Because Coach Kennedy's prayers were dedicated to the hard work of the student athletes and their sportsmanship during the game, his sincerely held religious beliefs required him to pray on the field of competition where the game was played. Ex. 4 (Kennedy Decl.) ¶ 14.

Coach Kennedy usually prayed alone. Ex. 10 (Kennedy Dep.) at 10:8–10; Ex. 4 (Kennedy Decl.) ¶¶ 16–17. As time went on, some players occasionally joined him in kneeling at the fifty-yard line. Ex. 10 (Kennedy Dep.) at 10:11–13; Ex. 4 (Kennedy Decl.) ¶ 18. Coach Kennedy himself "would not invite them to … join," Ex. 10 (Kennedy Dep.) at 20:17–21:3, because his understanding of school policy was that he "cannot encourage nor discourage the kids. So [he] can't tell them no, you can't come out here." *Id.* at 61:13–22; *see also id.* at 51:8–52:1. Kennedy testified that he "didn't really pay attention to … who comes out and who doesn't." *Id.* at 27:20–23. He "was still praying to God," and considered the prayer to be his "conversation to God giving

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thanks for these guys." *Id.* at 51:8–52:1. Coach Kennedy considered these prayers to be "personal," not conducted in his capacity "as a school person." *Id.* at 54:22–55:7.

The first time Coach Kennedy was aware of any complaints about his behavior was at the varsity football game on September 11, 2015. Until that point, nobody in the District or school administration professed to have any knowledge or awareness of Coach Kennedy's practice, let alone expressed the view that the practice was a problem. Ex. 5 (BHS Principal Dep.) at 53:22–54:7; Ex. 9 (District 30(b)(6) Dep.) at 58:16–59:4, 60:15–21; Ex. 11 (BHS Head Coach Dep.) at 59:4–11; Ex. 12 (BHS Athletic Dir. Dep.) at 38:24–39:12. Prior to the September 11 game, a coach from another school's football team told BHS Principal John Polm about Coach Kennedy's post-game prayer. Ex. 5 (BHS Principal Dep.) at 55:20–56:9. When Coach Kennedy entered the coach's office before the game, the other coaches told him that BHS Athletic Director Jeff Barton had just told them that Coach Kennedy could not pray anymore. Ex. 10 (Kennedy Dep.) at 23:18–25:22. Compelled by his religious beliefs, Kennedy proceeded to pray at that game. When he was done praying, he saw the other coaches shaking their heads and one mouthing to him: "They're going to fire you." *Id.* Kennedy had a "pit in [his] stomach … [and] knew something was up." *Id.*

During the next week, the school district conducted a fact-finding investigation that culminated in a letter Dr. Leavell sent to Coach Kennedy on September 17, 2015, stating that the District "has been conducting an inquiry into whether District staff have appropriately complied with Board Policy 2340, 'Religious-Related Activities and Practices.'" Ex. 3 (9/17/15 Ltr. District to Kennedy) at 1. Board Policy 2340 provides that "[s]chool staff shall neither encourage nor discourage a student from engaging non-disruptive oral or silent prayer or any other form of devotional activity." *Id.* at 2. The District's letter stated that any student participation in Coach Kennedy's post-game religious expression had been entirely "voluntary," and that Coach Kennedy "ha[d] not actively encouraged, or required, participation" by the students. *Id.* at 1. Nevertheless,

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Superintendent Leavell wrote that Coach Kennedy's actions "would very likely be found to violate the First Amendment's Establishment Clause" because "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." *Id.* at 1–2. The District then directed Coach Kennedy that, "to avoid the perception of endorsement" of religion, any religious "activity must be physically separate from any student activity, and students may not be allowed to join such activity," and that prayer "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." *Id.* at 3.

Coach Kennedy never again attempted to pray alongside students. Ex. 10 (Kennedy Dep.) at 162:24–163:4. Instead, he went back to his historic practice of kneeling at the game's end to say a silent, personal prayer, lasting "maybe 10 seconds." *Id.* at 163:10–166:16; Ex. 9 (District 30(b)(6) Dep.) at 149:20–150:13; Ex. 4 (Kennedy Decl.) ¶¶ 30–37. The next several weeks played out as follows:

> *September 18–Home v. Olympic*. After this game ended, Coach Kennedy gave the team a motivational speech, and he omitted any mention of God, given the pressure he felt from the District. Ex. 13 (9/19/15 Leavell Email). Nor did he kneel to say a personal prayer at the game's conclusion. But as he drove away from the stadium, Coach Kennedy felt "dirty" because he had broken his promise to "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." Ex. 4 (Kennedy Decl.) ¶¶ 11, 30. He turned his car around and went back to the field, where he waited until everyone else had left. He then walked to the fifty-yard line where he belatedly knelt to pray. *Id.* ¶ 30.
>
> *September 21–Away v. Olympic*. As the players left the field at the game's end, Coach Kennedy kneeled on the fifty-yard line and said a brief, silent prayer of thanksgiving. Ex. 14 (JV Schedule); *see also* Ex. 10 (Kennedy Dep.) at 165:21 ("I prayed after every game.").
>
> *September 25–Away v. Port Angeles*. After the students had "grabbed all of [their] stuff and as they were headed off … the field," Coach Kennedy "took a knee, said [his] prayer and continued … walking with the rest of the team." Ex. 10 (Kennedy Dep.) at 163:24–164:3.

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September 28–Home v. Port Angeles. As the players "went off to do the fight song," Coach Kennedy "took a knee" to say a personal, silent prayer. *Id.* at 164:8–12. Later when the fight song was complete, the students walked back out onto the field where Coach Kennedy gave a motivational "pep talk" with no religious content. *Id.*

October 2–Home v. Kingston. Coach Kennedy took a knee to say a silent, personal prayer following the game. *Id.* at 164:13–16.

October 5–Away v. Kingston. "[A]s the team was walking off to the bus" after the game, Coach Kennedy "was talking to [his] other coaches and [he] took a knee and said a prayer, and then continued walking with the team and the coaches." *Id.* at 165:4–14.

October 7–Home v. North Mason. When the game ended, Coach Kennedy took a knee and said a silent prayer. *Id.* at 165:15–25.

Although a representative from the District attended every one of these games, Ex. 9 (District 30(b)(6) Dep.) at 97:4–9, 99:24–101:1, 134:10, 164:1–9; Ex. 12 (BHS Athletic Dir. Dep.) at 59:20–60:4, 62:4–66:2; Ex. 5 (BHS Principal Dep.) at 50:11–12, during the four weeks from September 17 until October 16, no one from the District expressed any concerns that Coach Kennedy's private, silent prayers posed any issue, let alone that his brief religious observance prevented him from supervising players, or caused a safety hazard to students, or in any way interfered with his coaching duties. Rather, the District agreed that "following receipt of written guidance on September 17," Coach Kennedy had "to the District's knowledge … complied with the District's directives." Ex. 15 (10/16/15 Ltr. District to Kennedy) at 2.

On October 14, Coach Kennedy sent a letter to the District reaffirming his constitutional right to continue his "private, post-game prayer at the 50-yard line," and requesting a religious accommodation under Title VII of the Civil Rights Act of 1964. Ex. 16 (10/14/15 Ltr. Kennedy to District) at 6. The District understood Coach Kennedy's letter as a request to continue a "short, private, personal prayer at midfield" sometime after the end of a football game. Ex. 9 (District 30(b)(6) Dep.) at 113:13–21. In response, the District confirmed that Coach "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." Ex. 15 (10/16/15 Ltr. District to Kennedy); Ex. 9 (District 30(b)(6) Dep.) at 126:15–21.

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Following an October 16 game against Centralia, Coach Kennedy shook hands with the opposing team and waited until the Bremerton players were walking toward the stands to sing the post-game fight song, before kneeling, bowing his head, and closing his eyes to say a silent personal prayer. Ex. 4 (Kennedy Decl.) ¶ 32. While Kennedy was kneeling with his eyes closed, coaches and players from the opposing team, as well as members of the public and media, spontaneously joined him on the field and knelt beside him. *Id.* ¶ 33. When Coach Kennedy finished his silent prayer 15 seconds later and opened his eyes, he realized that others had joined. Ex. 10 (Kennedy Dep.) at 166:5–11, 68:9–21, 70:10–14. He had not asked anyone to do so, and instead had knelt by himself to say a private personal prayer. *Id.* at 68:9–21, 70:10–14. With Head Coach Gillam's permission, Coach Kennedy walked to the far end of the field to speak to reporters. *Id.* at 167:6–168:15. He "answered a few questions and then … went back up and joined the team" in the locker room, where he "stayed till the last kid left [as he had] at every single one of the games" that season. *Id.* at 167:23–24, 168:14–15.

After the game, District Superintendent Leavell sought a public statement from the Washington Superintendent of Public Instruction specifying what employees "can and can't do in respect to religion and prayer." Ex. 17 (10/20/15 Leavell Email). According to Leavell, the "issue … has shifted from leading prayer with student athletes, to a coach's right to conduct a personal, private prayer on the 50-yard line." Ex. 9 (District 30(b)(6) Dep.) at 144:12-15; Ex. 18 (10/21/15 Email Leavell to R. Dorn); Ex. 17 (10/20/15 Leavell Email).

A few hours before the next football game on October 23, 2015, the District sent Coach Kennedy another letter. Although the District noted that Coach Kennedy had "attempted to comply with the District's guidelines," and that his prayer on October 16 was "fleeting," Ex. 1 (10/23/15 Ltr. District to Kennedy), it nevertheless denied Coach Kennedy's request for a religious accommodation, stating that his "demonstrative religious conduct" violated the Establishment Clause. The District also asserted that Coach Kennedy's prayers had "dr[awn] [him] away from

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[his] work" because "until recently, [Coach Kennedy] regularly came to the locker room with the team and other coaches following the game." *Id.* As an accommodation, the District offered to allow Coach Kennedy to pray in a "private location within the school building, athletic facility, or press box." *Id.* at 3. The District's professed concern that Kennedy's prayers would take him away from his work is belied by the nature of its purported accommodations. It would take Coach Kennedy several minutes just to travel to each of these locations, much longer than his brief prayer lasted. *See* Ex. 5 (BHS Principal Dep.) at 35:23–41:2 (more than five minutes to locker room and back; six-minute round trip to press box).

Once that evening's football game had ended, Coach Kennedy knelt at the fifty-yard line to say a private and silent prayer of thanksgiving. *See* Ex. 19 (Screenshot 10/23/15 North Mason Video); Ex. 20 (10/23/15 North Mason Video); Ex. 9 (District 30(b)(6) Dep.) at 164:19–165:6; Ex. 5 (BHS Principal Dep.) at 77:8–84:15. The prayer was solitary and lasted about 15 seconds. *See* Ex. 9 (District 30(b)(6) Dep.) at 164:19–165:6; Ex. 5 (BHS Principal Dep.) at 80:17–19. After the junior varsity game on October 26, Coach Kennedy again knelt to say a brief, personal, silent prayer. *See* Ex. 9 (District 30(b)(6) Dep.) at 167:2–13; Ex. 5 (BHS Principal Dep.) at 84:8–15; Ex. 21 (Screenshot 10/26/15 North Mason video); Ex. 22 (10/26/15 North Mason video). As BHS's principal agreed, no students were present during either of these prayers, no crowds stormed the field, and there was no "spectacle." Ex. 5 (BHS Principal Dep.) at 80:1–82:11.

Two days later, however, the District placed Coach Kennedy on administrative leave and barred him from continuing to coach the team, based on his "overt displays of religious activity" at these two games. Ex. 9 (District 30(b)(6) Dep.) at 168:11–170:14. According to the District, Coach Kennedy had violated its directives by "engaging in overt, public and demonstrative religious conduct while still on duty as an assistant coach." Ex. 23 (10/28/15 Ltr. District to Kennedy). Specifically, the District stated that it suspended Coach Kennedy because he had

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"kneeled on the field and prayed immediately following [the] game, while [his] players were still engaging in post-game traditions." *Id*.

District Superintendent Aaron Leavell was the "sole decisionmaker" regarding Coach Kennedy. Ex. 9 (District 30(b)(6) Dep.) at 20:20–23; *see also* Ex. 24 (District Resp. To Interrogs.) at 6. Leavell testified that Kennedy was suspended "solely [because of] 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." Ex. 9 (District 30(b)(6) Dep.) at 197:2–10. This stated reason is consistent with the District's statements to both the public and the federal government. In a letter publicized on the District's website shortly after Coach Kennedy's suspension, the District explained the bases for its actions: "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." Ex. 2 (10/28/15 Bremerton Statement and Q&A) at 1.

The District offered the same explanation to the Equal Employment Opportunity Commission ("EEOC"). In response to a complaint filed by Coach Kennedy after his suspension, Ex. 25 (12/15/15 Kennedy EEOC Compl.), the District explained to the EEOC why it had placed Coach Kennedy on administrative leave: "the District's course of action in this matter has been driven *solely* by concern that [Coach Kennedy's] conduct might violate the constitutional rights of students and other community members, thereby subjecting the District to significant potential liability." Ex. 26 (4/6/17 Ltr. District to EEOC) at 6 (emphasis added). School officials testified that Coach Kennedy could not return to coaching "unless and until he agreed to comply with the District's directive" to stop saying a personal, silent prayer at the game's end. Ex. 12 (BHS Athletic Dir. Dep.) at 84:10–16; *see also* Ex. 9 (District 30(b)(6) Dep.) at 37:18–25.

On August 9, 2016, Coach Kennedy filed a complaint in this Court seeking to vindicate his constitutional rights under the Free Exercise and Free Speech clauses of the First Amendment, as well as several statutory rights under Title VII of the Civil Rights Act of 1964. This Court denied

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Coach Kennedy's motion for preliminary injunction based on the limited factual record then before it, and the Ninth Circuit affirmed. *See Kennedy v. Bremerton Sch. Dist.*, 869 F.3d 813 (9th Cir. 2017) (*Kennedy I*). Concurring in the Supreme Court's subsequent denial of certiorari, Justice Alito, joined by three of his colleagues, criticized the reasoning of the Ninth Circuit's decision but ultimately concluded that it would be premature for the Court to take the case "until the factual question of the likely reason for the school district's conduct is resolved." *Kennedy v. Bremerton Sch. Dist.*, 139 S. Ct. 634, 636 (2019) (*Kennedy II*). The case therefore returned to this Court for further factual development. Following extensive discovery, Coach Kennedy now moves for summary judgment.

III. ARGUMENT

Summary judgment is proper when the record shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary judgment is appropriate on all of Coach Kennedy's Claims.

A. The District Violated Coach Kennedy's Right to Free Speech

The District's actions violated Coach Kennedy's First Amendment right to freedom of speech. "[P]ublic employees do not surrender all their First Amendment rights by reason of their employment." *Kennedy I*, 869 F.3d at 822 (brackets in original) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006)). Quite the opposite: the Constitution guarantees public servants, like Coach Kennedy, their right to speak as citizens on matters of public concern.

To determine whether the government has violated a government employee's right to free speech, the Ninth Circuit applies a "sequential five-step" analysis based on the Supreme Court's decision in *Pickering v. Board of Education of Township High School District 205*, 391 U.S. 563 (1968), which evaluates:

> (1) [W]hether the plaintiff spoke on a matter of public concern;
> (2) whether the plaintiff spoke as a private citizen or public

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> employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009).

Here, as the Ninth Circuit previously noted, the District has not denied that Coach Kennedy "spoke on a matter of public concern" (factor 1), that his silent prayer "was a substantial or motivating factor" for the District's action against him (factor 3), or that Coach Kennedy's prayer was the but-for cause for that decision (factor 5). *Kennedy I*, 869 F.3d at 822. Nor could the District do so in light of the undisputed facts, which show that the District suspended Coach Kennedy "solely" because of his religious speech. Ex. 9 (District 30(b)(6) Dep.) at 197:2–10; Ex. 26 (4/6/17 Ltr. District to EEOC) at 6. The only disputed issues in this case are thus whether Coach Kennedy's decision to pray silently was tantamount to speaking on behalf of the District (factor 2), and whether failure to remove Coach Kennedy from his position would have resulted in a violation of the Establishment Clause (factor 4).

Following the preliminary injunction proceedings, the parties engaged in extensive discovery. The factual record the parties developed shows that the District violated Coach Kennedy's First Amendment right to freedom of speech. Coach Kennedy did not speak on behalf of the District when he engaged in brief, private prayer; rather, consistent with the District's initial guidance, Coach Kennedy intentionally avoided organizing prayer with others so that his conduct would not be perceived as government speech. And for similar reasons, Coach Kennedy's conduct did not constitute an Establishment Clause violation—the District's sole reason for suspending him.

1. Coach Kennedy Spoke as a Private Citizen, Not a Public Employee

As the Ninth Circuit explained, "the second *Eng* factor requires a practical, fact-intensive inquiry into the nature and scope of a plaintiff's job responsibilities. It also requires a careful

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examination of the precise speech at issue." *Kennedy I*, 869 F.3d at 830 n.11. Discovery following the Ninth Circuit's remand has shown that when Coach Kennedy engaged in brief, private prayer at the fifty-yard line, he did so as a private citizen. To determine when a public employee's speech is protected, the "critical question" is not whether an employee is merely visible to others, but rather "whether the speech at issue is itself ordinarily within the scope of an employee's duties." *Lane v. Franks*, 573 U.S. 228, 240 (2014). Thus, so long as Coach Kennedy's religious expression is "outside the scope of his ordinary job responsibilities," it constitutes "speech as a citizen for First Amendment purposes." *Lane*, 573 U.S. at 238.

Nothing about Coach Kennedy's "ordinary job responsibilities" requires him to pause at the end of each game to "give thanks through prayer." Ex. 4 (Kennedy Decl.) ¶ 11; *see also* Ex. 27 (Coach & Volunteer Coach Agreement). The District's list of "Assistant Coach Responsibilities," which identifies tasks such as "[a]ssist in the upkeep and inventory of equipment," and "[s]upervise all dressing rooms as designated," Ex. 28 (Assistant Coach Responsibilities), are obviously unrelated to Coach Kennedy's fleeting religious expression. This is not a case where a "public employee raise[d] complaints or concerns up the chain of command at [his] workplace about [his] job duties," *Coomes v. Edmonds Sch. Dist. No. 15*, 816 F.3d 1255, 1262 (9th Cir. 2016), or where supervisors objected to the content of work product, *see Garcetti*, 547 U.S. at 422. Here—as in *Lane* itself—Coach Kennedy's speech was entirely "outside the scope of his ordinary job responsibilities." 573 U.S. at 238.

Relying on an incomplete record, the Ninth Circuit preliminarily concluded that Coach Kennedy's prayers fell within his official duties as a coach because that job "entailed both teaching and serving as a role model and moral exemplar." *Kennedy I*, 869 F.3d at 826–27. Although the District certainly expected Coach Kennedy to set an example for his players—a duty that witnesses universally acknowledged Coach Kennedy performed admirably, *see supra* at 2–3—the District has also testified that not every action undertaken or word spoken by its coaches is an official act

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of the school. The District permits coaches to engage in a variety of personal, expressive activities while "on duty" as a coach; for example, making a phone call or greeting a spouse or family members in the stands. Ex. 9 (District 30(b)(6) Dep.) at 125:12–126:8; Ex. 7 (Asst. Coach Boynton Dep.) at 19:22–21:23. Although activities such as these occur while an employee is "on the clock," they are not undertaken in furtherance of an official duty. So too for Coach Kennedy's brief prayers. As Justice Alito observed in considering Coach Kennedy's petition for certiorari, *Garcetti* does not stand for the proposition that government employees are "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." *Kennedy II*, 139 S. Ct. at 636 (Alito, J., concurring). To hold otherwise would require schools to forbid teachers from bowing their heads in prayer before eating or "reading things that might be spotted by students or saying things that might be overheard." *Id.* The First Amendment does not tolerate such extreme curtailments of speech.

As the Ninth Circuit has since explained, schools may regulate speech when it is directed at "impressionable and captive minds," *Greisen v. Hanken*, 925 F.3d 1097, 1112 (9th Cir. 2019), but that was plainly not the case for the speech in which Coach Kennedy engaged and which led to the District's action. Coach Kennedy's brief, silent prayers were not directed at those around him. Indeed, as the District has admitted, Coach Kennedy abided by its original directive to separate himself from students, *see* Ex. 2 (10/28/15 Bremerton Statement and Q&A) at 1–2 ("Mr. Kennedy has complied with those directives not to intentionally involve students in his on-duty religious activities."); Ex. 23 (10/28/15 Ltr. District to Kennedy). On the limited record available, the Ninth Circuit surmised that because Coach Kennedy had refused to refrain from prayer until "after the stadium had emptied and students had been released to the custody of their parents," it must have been "essential [to him] that his speech be delivered in the presence of students and spectators," and that therefore the "'speech at issue' is *directed* at least in part to the students and surrounding spectators; it is not solely speech directed to God." *Kennedy I*, 869 F.3d at 825.

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The Ninth Circuit's conclusion, however, was based on an assumption that is no longer supported by the record. As Coach Kennedy testified, the presence of others around him while he prays is irrelevant. Ex. 10 (Kennedy Dep.) at 27:22–23. What matters instead is that he be allowed to pray shortly after games conclude to give thanks for what the players had just accomplished and for the opportunity to be a part of their lives. Ex. 4 (Kennedy Decl.) ¶ 11. The sole intended audience for these prayers is God; it was for that reason that following the District's original directive, Coach Kennedy prayed *silently* and waited until the student athletes were heading to the sidelines to participate in the BHS fight song, Ex. 10 (Kennedy Dep.) at 51:23-52:1, 55:5–6, as the documentary evidence of Coach Kennedy's prayers confirms, Ex. 19 (Screenshot 10/23/15 North Mason Video). No one was "captive," *Kennedy I*, 869 F.3d at 828, and to those who happened to observe Coach Kennedy, it would appear as though he was merely tying his shoe or retrieving something from the ground. No wonder, then, that Coach Kennedy's conduct went unnoticed for years.[2]

The mere fact that speech by a public employee *might* be heard or visible to others does not strip that speech of constitutional protection. According to the District, prayer—no matter how private and fleeting—is forbidden whenever its employees are on the clock and potentially visible to students. But the Constitution does not require a football coach to run away and hide anytime the coach desires to engage in private religious speech, no more than it requires a Christian to remove a necklace with the cross, a Jew to remove a yarmulke, a Muslim to remove a hijab, or a religious person not to pray over a meal, just because they happen to be "within the eyesight of students." *Kennedy II*, 139 S. Ct. at 636 (Alito, J., concurring). Even still, as Coach Kennedy himself has made clear, he has always been willing to wait—and historically has waited—until student athletes complete their post-game handshake and begin to leave the field to perform the

[2] According to the District's letter to Coach Kennedy, it was the October 23 and 26 games against North Mason that precipitated his suspension. Ex. 23 (10/28/15 Ltr. District to Kennedy). In taking action against Coach Kennedy, the District did not reference prior games, such as those against Olympic on September 19 and Centralia on October 16, where due to the publicity regarding Coach Kennedy, there was a larger contingent of media present than is typical.

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fight song, gather equipment, and head to the locker room. *See* Ex. 10 (Kennedy Dep.) at 46:19–49:9. That is because the presence or absence of students has nothing to do with his beliefs, as his prayers have never been directed at them. Because praying silently and physically separated from players is not "ordinarily within the scope of a[] [coach]'s duties," Coach Kennedy spoke as a private citizen. *Lane*, 573 U.S. at 240. The Constitution protects such speech.

2. The District Had No Justification for Taking Action Against Coach Kennedy

The District originally claimed that it had an "adequate justification," *Eng*, 552 F.3d at 1070, for suspending Coach Kennedy because (1) his prayers violated the Establishment Clause, and (2) in dedicating a moment to prayer, Coach Kennedy failed to supervise his players. *See Kennedy I*, 869 F.3d at 819. The Ninth Circuit never reached the former rationale, and the District abandoned the latter during the course of discovery. The burden is the government's to bear, *see Eng*, 552 F.3d at 1071, and it is even "greater" here where the District "s[ought] to justify a broad deterrent on speech that affects an entire group of its employees," *Tucker v. Cal. Dep't of Educ.*, 97 F.3d 1204, 1210–11 (9th Cir. 1996). The District therefore had no adequate justification for suspending Coach Kennedy for his protected speech.

First, Coach Kennedy's prayers did not violate the Establishment Clause. To justify a restriction on protected speech, the District must "demonstrate[] that the Establishment Clause would be violated if it permitted" the speech at issue. *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1053 (9th Cir. 2003) (per curiam); *see also Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 112, 120 (2001) (rejecting speech restriction that was not "required to avoid violating the Establishment Clause"). A mere fear that the Establishment Clause might be violated is insufficient grounds for adverse action; instead, the government must demonstrate an *actual* violation. *See Good News Club*, 533 U.S. at 112; *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993); *Widmar v. Vincent*, 454 U.S. 263, 271–73 (1981). The District has failed to do so here.

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The Supreme Court's decision in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), provides the framework for determining whether prayer at public school comports with the Establishment Clause. The key question is "whether an objective observer, acquainted with the text, legislative history, and implementation of the [policy], would perceive it as a state endorsement of prayer in public schools." 530 U.S. at 308 (citations omitted). In other words, does the government's policy have an "improper effect of coercing those present to participate in an act of religious worship"? *Id.* at 312; *see also, e.g.*, *Lee v. Weisman*, 505 U.S. 577, 587 (1992) ("the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise"); *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2093 (2019) (Kavanaugh, J., concurring) (explaining that the Supreme Court's school prayer jurisprudence has evaluated whether "government-sponsored prayer in public schools posed a risk of coercion of students"). The conduct at issue in *Santa Fe*—an official school policy permitting students to elect a spokesperson to lead the school in prayer before football games—failed this test. That was because the school district in *Santa Fe* had "solemnize[d] the event," 530 U.S. at 298 n.6, by "approv[ing] of only one specific kind of message, an 'invocation,'" *id.* at 309. The speech at issue thus became "school-sponsored prayer," *id.* at 316 n.3, and would be recognized as such by an objective observer acquainted with the circumstances under which it arose. Because the school district's policy would have the effect of coercing "those students not desiring to participate in a religious exercise," the Court held that it violated the Establishment Clause. *Id.* at 317.

No such risk exists here. Unlike the policy endorsing prayer in *Santa Fe*, or the school-sponsored benediction in *Lee v. Weisman*, Coach Kennedy's brief, silent prayers were of an entirely private nature. Any "objective observer" familiar "with the text, legislative history, and implementation of the [policy]," *Santa Fe*, 530 U.S. at 308 (citations omitted), would necessarily conclude that the District did not endorse them in any manner. That explains why it took years before anyone appeared to notice Coach Kennedy's practice of engaging in brief, silent prayer,

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and why the District again took no action against Coach Kennedy from when it sent its September 17, 2015 letter until October 16—even though Coach Kennedy performed his post-game prayer while administration officials were in attendance at all subsequent games. Indeed, the District confirmed that Coach Kennedy had complied with its guidance during this period. *See* Ex. 15 (10/16/15 Ltr. District to Kennedy) at 2.

Similarly, the District had no involvement in regulating "the topic and the content" of Coach Kennedy's religious expression, *Doe ex rel. Doe v. Sch. Dist. of Norfolk*, 340 F.3d 605, 612 (8th Cir. 2003), nor were Coach Kennedy's prayers "the product of any school policy" that "actively or surreptitiously encourages" religious expression, *Chandler v. Siegelman*, 230 F.3d 1313, 1317 (11th Cir. 2000). The District was not even aware of Coach Kennedy's religious expression for the first eight years of his tenure at Bremerton. *See* Ex. 9 (District 30(b)(6) Dep.) at 58:16–59:4, 60:15–21; *see also Doe*, 340 F.3d at 612 (no state sponsorship where "there is no evidence that any representative of the School District had any knowledge of [the speaker]'s intentions"). When the District did become aware of Coach Kennedy's conduct, it took active and public steps to distance itself from Coach Kennedy's prayers. For example, the District issued statements to the public and worked with Coach Kennedy to ensure that neither students nor spectators would mistake his conduct for a District-sponsored religious practice. Ex. 2 (Bremerton Statement). As a result, nothing about Coach Kennedy's conduct was "likely to cause a reasonable person to believe that the state is speaking or supports his views." *Tucker*, 97 F.3d at 1213.

And by the District's own admission, Coach Kennedy's brief, silent prayers did not coerce players into engaging in religious practice. Ex. 3 (9/17/15 Ltr. District to Kennedy) at 1. Coach Kennedy did not offer his prayers to a "captive" audience in a classroom or at a graduation ceremony. *See, e.g.*, *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957 (9th Cir. 2011) (classroom); *Nurre v. Whitehead*, 580 F.3d 1087, 1095 (9th Cir. 2009) (graduation ceremony); *see also Hills*, 329 F.3d at 1054 n.8 (9th Cir. 2003) ("graduation exercise" is a "decidedly different

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context … in which the possibility that the speech bears the imprimatur of the school is heightened"). Nor were Coach Kennedy's prayers "broadcast over the school's public address system." *Santa Fe*, 530 U.S. at 307. As discussed, Coach Kennedy intentionally separated himself from students and waited until players were departing the field before engaging in prayer. Because Coach Kennedy went to great lengths to ensure that he did not coerce players or fellow coaches into joining him, the District's suggestion that Coach Kennedy's continued practice risked violating the Establishment Clause is unfounded.

Second, for a brief period, the District appeared to claim that it suspended Coach Kennedy because he failed to supervise his players during the 10–15 second period in which he knelt to pray. *See* Ex. 1 (10/23/15 Ltr. District to Kennedy) at 2; Ex. 29 (11/20/15 Kennedy Coaching Evaluation) ("Mr. Kennedy failed to supervise student-athletes after games due to his interactions with media and community."). That pretextual justification simply could not hold water, and the District refused to embrace it during discovery. As Superintendent Leavell—the District's corporate representative—unambiguously testified, the District's decision was "driven solely by concern that Mr. Kennedy's conduct might violate the constitutional rights of students and other community members." Ex. 9 (District 30(b)(6) Dep.) at 197:2–10. Leavell's binding testimony comports with the District's contemporaneous representations to the public and to the federal government that it suspended Coach Kennedy for his "refusal to comply with the District's … directives that he refrain from engaging in overt, public religious displays," Ex. 2 (10/28/15 Bremerton Statement and Q&A) at 1, and that the District was "driven solely by concern that [Coach Kennedy's] conduct might violate the constitutional rights of students and other community members," Ex. 26 (4/6/17 Ltr. District to EEOC) at 6. There is thus no dispute that the sole reason the District took adverse action against Coach Kennedy was its (erroneous) belief that allowing Coach Kennedy to engage in his brief, personal prayer violated the Establishment Clause. Indeed, the District admitted that it would not discipline a coach for engaging in any

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number of personal activities lasting 10–15 seconds, like checking a phone, *see* Ex. 9 (District 30(b)(6) Dep.) at 125:12–126:2, leaving the field to greet a spouse for 30 seconds to a minute, *id.* at 126:3–8, or taking a knee for 10–15 seconds to tie a shoe—which is identical to Coach Kennedy's posture when he prayed, *id.* at 166:21–167:1.

Because Coach Kennedy spoke as a private citizen on a matter of public concern that directly led to the District's adverse action, and the District has failed to offer an adequate justification for the action it took to curtail Coach Kennedy's protected speech, summary judgment should be granted on Coach Kennedy's Free Speech claim.

B. The District Violated Coach Kennedy's Right to Practice His Religion

For much the same reasons that the District violated Coach Kennedy's right to engage in protected speech, the District impermissibly interfered with Coach Kennedy's First Amendment right to practice his faith. Government action targeting religion "is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). The District's actions fail this test.

The Free Exercise Clause, applicable to the States via the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof* . . . ." U.S. Const. amend. I (emphasis added). While the Supreme Court in *Employment Division, Department of Human Resources of Oregon v. Smith* concluded that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes),'" 494 U.S. 872, 879 (1990), the Court made clear—and has since confirmed—that a "law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny," *Lukumi*, 508 U.S. at 546. The District's policy as applied against Coach Kennedy was neither neutral nor generally applicable.

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"[I]f the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral . . . ." *Lukumi*, 508 U.S. at 533 (citation omitted). The District unquestionably suspended Coach Kennedy because he engaged in religious activity that the District considered to be in violation of its Policy 2340. Indeed, unlike the law at issue in *Lukumi*, which the Supreme Court ruled invalid despite being facially neutral, *see* 508 U.S. at 534, in this case the District stated expressly that its policy forbade Coach Kennedy from continuing in his job so long as he insisted on engaging in *religious* conduct. Ex. 2 (10/28/15 Bremerton Statement and Q&A) at 1 ("unless and until [Kennedy] affirms his intention to comply with the District's directives, he will not participate, in any capacity, in BHS football program activities"). Curbing religious practice is the very purpose of the District's Policy 2340, which is entitled "Religious-Related Activities and Practices."

Nor was the District's policy "generally applicable." A law is not generally applicable if it, "in a selective manner[,] impose[s] burdens only on conduct motivated by religious belief." *Lukumi*, 508 U.S. at 543. As discussed, the District's policy burdens exclusively religious conduct. While the District permitted its employees to engage in non-religious conduct that separated coaches from players for similar durations or longer, such as tying shoes or using the restroom, the manner in which the District applied its religious policy exclusively burdened religious conduct.

Because the District's policy was neither neutral nor generally applicable, the District is required to show that its policy serves "'interests of the highest order' and must be narrowly tailored in pursuit of those interests." *Lukumi*, 508 U.S. at 546 (quoting *McDaniel v. Paty*, 435 U.S. 618, 628 (1978) (plurality opinion)). The District can show neither. There is no legal support for the District's sole stated justification that Coach Kennedy's conduct violated the Establishment Clause. Absent such a showing, the District not only lacks a compelling interest—it lacks *any* interest justifying the adverse action it took against Coach Kennedy. And even if the District had met its burden on this point, the District made no meaningful effort to tailor its policy in such a

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way so as to allow Coach Kennedy to exercise his faith. As discussed, the District's proposed solutions were to require that Coach Kennedy refrain from prayer until all players were released to their parents and Coach Kennedy was no longer on duty; alternatively, the District demanded that Coach Kennedy pray off-site and away from view. Neither solution allowed for the exercise of Coach Kennedy's sincere religious beliefs. The District, of course, had a narrowly tailored solution readily available: allow Coach Kennedy to offer his brief, personal prayer, so long as he did so silently and did not involve players, which is exactly what Coach Kennedy was doing. *See* Ex. 3 (9/17/15 Ltr. District to Kennedy). Indeed, this was the solution that the District itself initially proposed and with which Coach Kennedy complied.

"A law that targets religious conduct for distinctive treatment or advances legitimate governmental interests only against conduct with a religious motivation will survive strict scrutiny only in rare cases." *Lukumi*, 508 U.S. at 546. This is not one of those rare cases. The District suspended Kennedy specifically for exercising his religious beliefs; because the District can offer no adequate justification for doing so, Kennedy's suspension violated the Free Exercise Clause.[3]

C. The District Violated Title VII of the Civil Rights Act of 1964

In addition to violating his rights to free speech and free exercise, as protected by the First Amendment, the District committed a series of statutory violations under Title VII of the Civil Rights Act of 1964. Liability is established under Title VII so long as "a protected characteristic was 'a motivating factor' in an employment action, even if there were other motives." *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 848 (9th Cir. 2002) (en banc), *aff'd*, 539 U.S. 90 (2003); *see* 42

[3] In *Berry v. Department of Social Services*, the Ninth Circuit chose to treat a government employee's Free Exercise claim as a Free Speech claim, thereby avoiding strict scrutiny required by *Lukumi* and *Smith*. *See* 447 F.3d 642, 648–50 (9th Cir. 2006). The plaintiff in that case, a county social service employee, had sought to meld speech with his official duties by talking religion with clients, undermining the government's interest "in promoting the efficiency of the public services it performs through its employees." *Id.* at 648 (quoting *Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968)). That rationale does not apply here, where Coach Kennedy neither entangles his brief, silent prayer with his duties as a coach, nor seeks to convey any message to those around him. *See* Ex. 10 (Kennedy Dep.) at 27:22–23, 51:23–52:1, 55:5–6. But even if this Court were to apply *Pickering*, as discussed, *supra* Section III.A, Coach Kennedy's Free Exercise Clause claim would be meritorious.

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U.S.C. § 2000e-2(m). Coach Kennedy's sincere desire to practice his faith is a protected characteristic that entitles him to certain rights under that statute, which the District disregarded when it chose to take adverse action against Coach Kennedy.

1. Disparate Impact (42 U.S.C. § 2000e-2(a)) and Failure to Rehire (42 U.S.C. § 2000e-2(a)(1)) Claims

To establish a claim for disparate treatment under Title VII, a plaintiff must show that "(1) he belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action; and (4) similarly situated individuals outside his protected class were treated more favorably." *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1123 (9th Cir. 2000). There is no question that Coach Kennedy, as a practicing Christian, is a member of a protected class, *see* 42 U.S.C. § 2000e-2(a); *see Nguyen v. Qualcomm, Inc.*, 501 F. App'x 691, 693 (9th Cir. 2012), that Coach Kennedy was qualified for his position, *see* Ex. 8 (Kennedy Evaluations), and that he was subject to an adverse employment action. What the District contests is that it treated Coach Kennedy differently than other coaches. The undisputed evidence before the Court, however, makes clear that it did. Other coaches were free to engage in analogous non-religious conduct, such as tying their shoes, without fear of punishment, *see, e.g.*, Ex. 9 (District 30(b)(6) Dep.) at 166:21–167:1, and the record shows that Coach Kennedy outperformed these individuals—something his supervisors recognized. What differentiated Coach Kennedy from his coworkers were his religious beliefs. Because the District treated Coach Kennedy differently than his coworkers on this basis, the District violated Title VII. And in refusing to rehire Coach Kennedy because of his religious conduct, the District violated specifically 42 U.S.C. § 2000e-2(a)(1).

2. Failure to Accommodate (42 U.S.C. §§ 2000e-2(a) & 2000e(j))

The District's sole basis for suspending Coach Kennedy is that the District could not tolerate any of its coaches engaging in brief, silent prayer. The District's refusal to work with Coach Kennedy to reach a reasonable accommodation whereby he could fulfill his duties as both

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a coach and a Christian violated Title VII. An employee establishes a prima facie case under Title VII when he proves that (1) "he had a bona fide religious belief, the practice of which conflicted with an employment duty"; (2) "he informed his employer of the belief and conflict"; and (3) the employer treated him differently or took adverse action against him as a result of his inability to fulfill his duties. *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). Notably, the "prima facie case does *not* include a showing that the employee made any efforts to compromise his or her religious beliefs or practices before seeking an accommodation from the employer. *Id.* Coach Kennedy has offered unrebutted evidence satisfying each of these factors: (1) the District does not challenge the sincerity of Coach Kennedy's religious beliefs, Ex. 9 (District 30(b)(6) Dep.) at 52:11–16; (2) Coach Kennedy clearly alerted the District of his desire to pray; and (3) there is no question that the District took adverse action against Coach Kennedy as a result of his desire to continue praying.

Because Coach Kennedy established a prima facie case, the burden fell on the District to "establish that it initiated good faith efforts to accommodate [Coach Kennedy]'s religious practices." *Heller*, 8 F.3d at 1438. The District failed to do so. As discussed, Coach Kennedy's sincerely held religious beliefs required that he pray following the conclusion of games on the fifty-yard line. The District's initial accommodation—allowing Coach Kennedy to pray so long as he did so silently and apart from students—was a reasonable and acceptable accommodation Coach Kennedy was willing to abide by. The District's subsequent reversal and attempt to offer different solutions, in contrast, did not allow Coach Kennedy to honor his religious obligations because they required him to remove himself from the field, or wait to pray well after games ended. Those proposals were, in effect, no accommodation at all. The District therefore is liable under Title VII because it failed to provide a reasonable accommodation for Coach Kennedy.

3. Retaliation (42 U.S.C. § 2000e-3(a))

Finally, the District additionally violated Title VII when it retaliated against Coach

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Kennedy for attempting to seek relief under the Civil Rights Act of 1968. To prevail on a claim of unlawful retaliation, a plaintiff must show that "(1) she engaged in a protected activity, (2) she suffered an adverse employment action, and (3) there was a causal link between her activity and the employment decision." *Raad v. Fairbanks N. Star Borough Sch. Dist.*, 323 F.3d 1185, 1196–97 (9th Cir. 2003). After Coach Kennedy decided to retain counsel and assert his rights in this case, the District assumed a different, more rigid position regarding his right to pray, gave Coach Kennedy a negative evaluation (the first of his career), and ultimately chose to place Coach Kennedy on administrative leave. The District violated the law when it decided to penalize Coach Kennedy for asserting his Title VII statutory rights.

IV. CONCLUSION

This Court should grant Coach Kennedy's motion for summary judgment, declare that the District's actions violated his constitutional and statutory rights, order Coach Kennedy reinstated, and provide the additional relief requested in the Complaint.

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DATED this 14th day of November, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2019, the foregoing document was served via electronic filing on all counsel of record in this case.

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