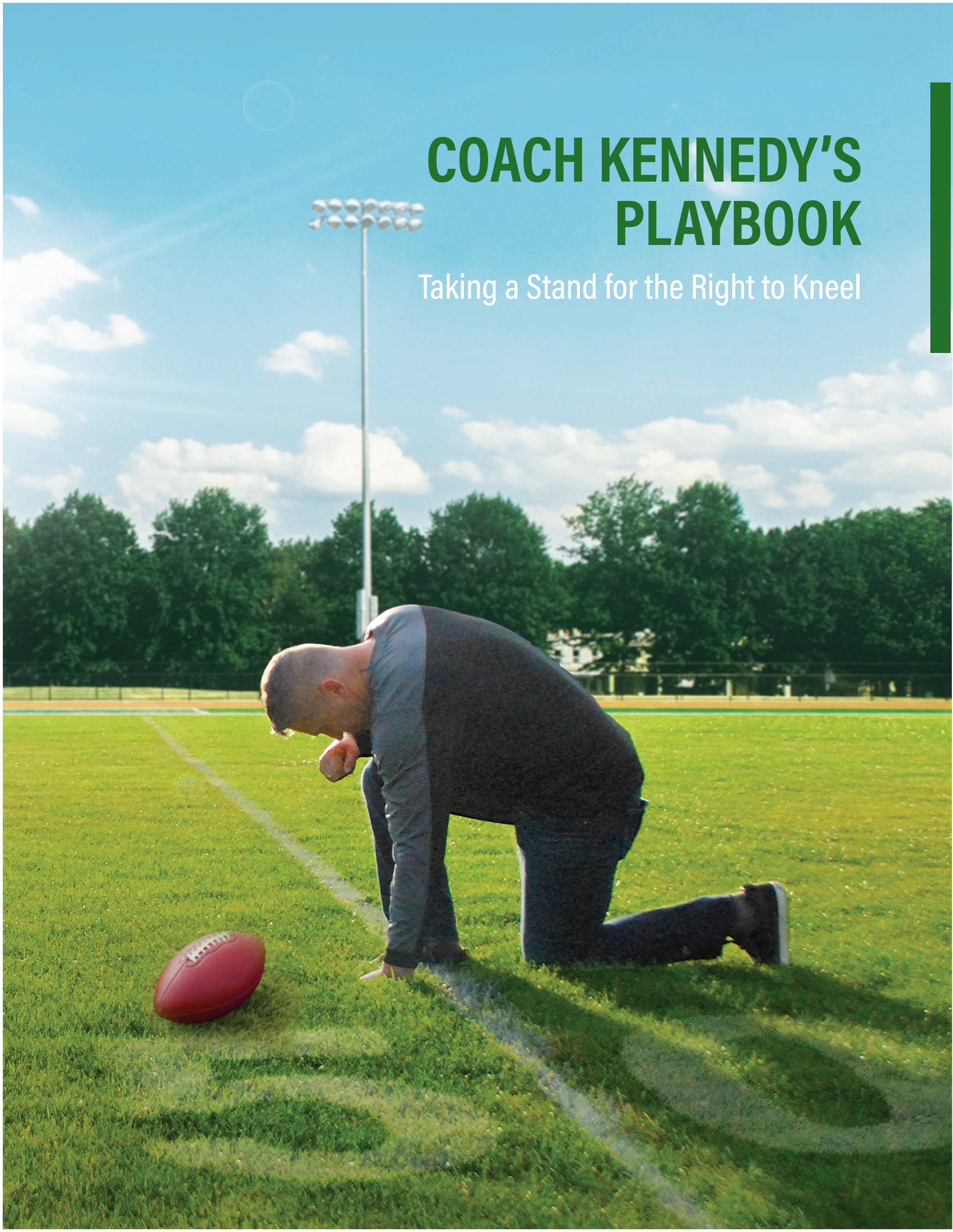


# COACH KENNEDY'S PLAYBOOK

Taking a Stand for the Right to Kneel





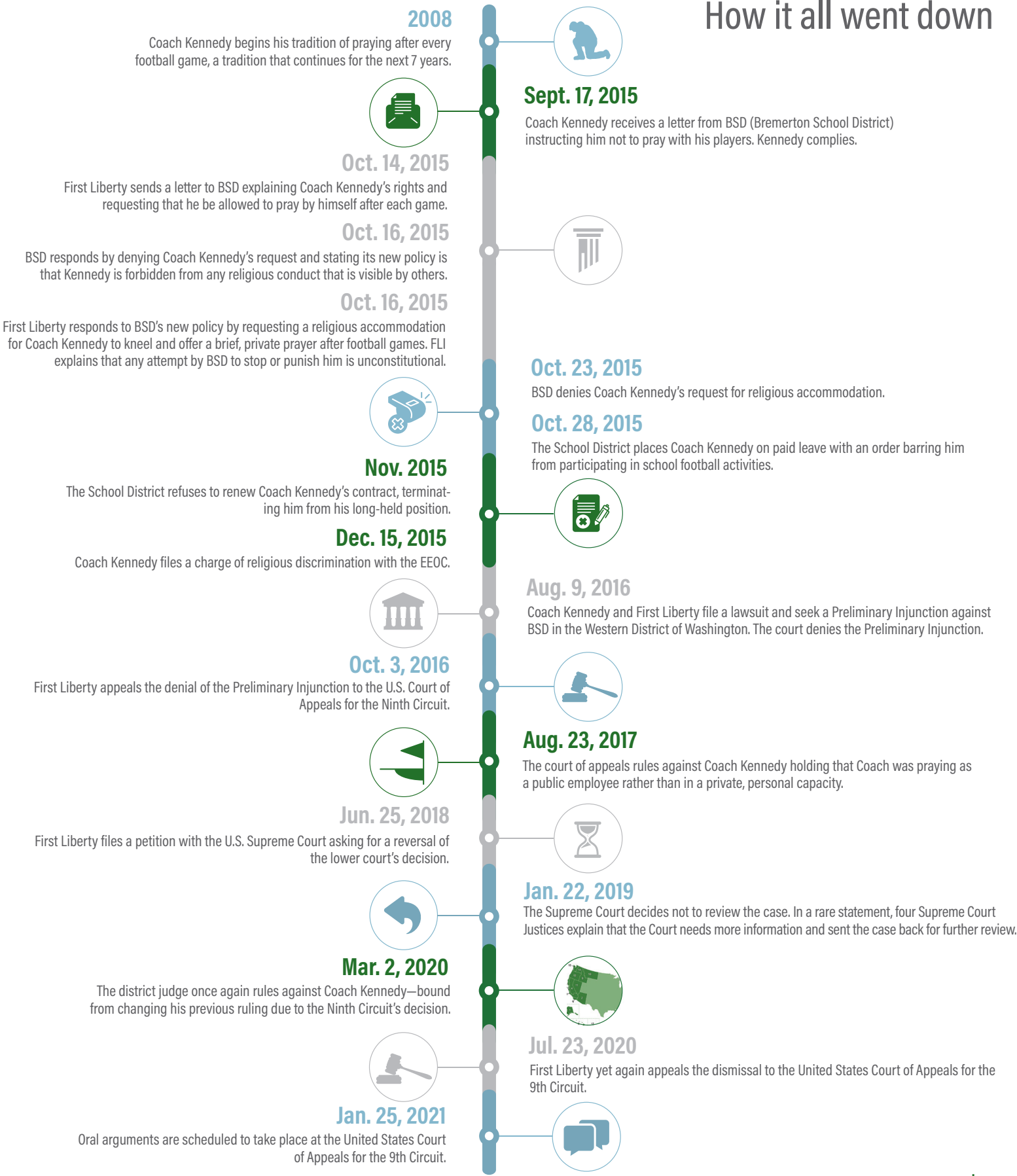


It started  
with a **prayer.**



In **2008**, Bremerton Highschool football coach **Joe Kennedy** made a commitment to God that he would pray and give thanks after each game he coached, regardless of the outcome. This commitment to a small, personal act of worship would eventually cause him to be stripped of his position as coach and forced into a lengthy, ongoing legal battle against the school he faithfully served. So, what led to Coach Kennedy's situation today, and what does this case mean for people of faith across the nation?

## The Kennedy Timeline: How it all went down







# Setting the Field: Who is First Liberty?

## PROTECTING AND DEFENDING OUR FIRST FREEDOM:

First Liberty is the nation's largest legal organization solely dedicated to protecting religious liberty for all Americans, offering pro bono legal assistance to defend religious freedom.

First Liberty has guided thousands of people of faith through vital legal matters, just as we stand with Coach Kennedy in his quest to freely exercise his right to religious liberty. We have argued and won cases at all court levels, including the Supreme Court, thanks to our devoted team of top-ranked staff attorneys who work alongside extensive network of litigators from law firms across the nation.

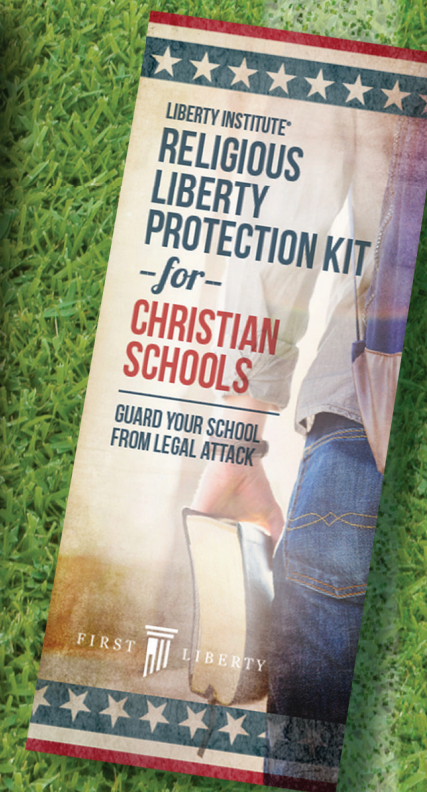
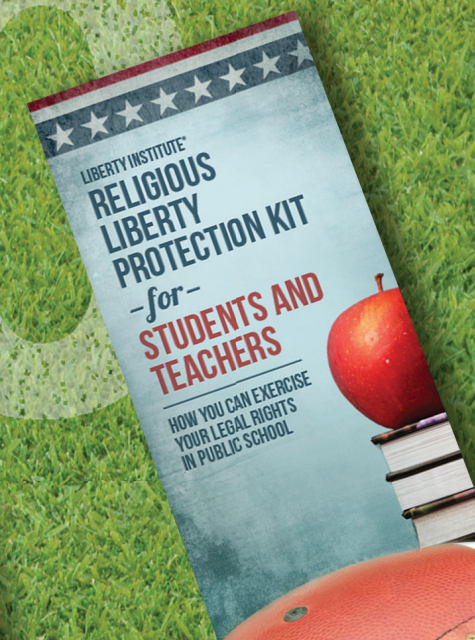
This unique strategy leverages pro bono work from attorneys across the country to ensure that legal battles are fought by local attorneys on their home turf. This strategy has resulted in a win rate of over 90 percent for our clients.

In addition to "Coach Kennedy's Playbook," First Liberty offers protection kits which provide useful facts and legal information regarding your right to religious freedom.

Visit the links to access these free-of-charge kits prepared for you by our team of experienced religious liberty experts.



For more information, visit [FirstLiberty.org/kits](https://FirstLiberty.org/kits) to learn more about First Liberty, explore other available resources, and get involved in the fight for our first freedom, religious liberty.



### Religious Liberty Protection Kit for

- U.S. MILITARY
- CHRISTIAN SCHOOLS
- CHURCHES
- MINISTRIES
- STUDENTS & TEACHERS





# Who is Coach Kennedy?

Before stepping up to lead as coach of the Bremerton High School football team, **Joe Kennedy served in the U.S. Marine Corps for twenty years**, spending time deployed overseas and participating in Operation Desert Shield and Desert Storm.

While overseas, Kennedy witnessed firsthand what the absence of religious freedom looked like. This experience bred a greater appreciation for the freedoms we enjoy here in the United States, and showed him the ways in which we take our rights for granted. Upon completing his time in the military, he got connected with the local football team by chance, after being told about the team's need for some-

one well acquainted with leadership and team building. Upon joining as Bremerton High School football coach, Kennedy used the skills he gained in the Marine Corps to build disciplined players.

In 2008, the newly minted Coach Kennedy made a commitment to God that he would give thanks after every game—win or lose—for the opportunity to be a football coach and for his players.

So, after his inaugural football game, Coach Kennedy waited until the players had left the field, and then took a knee to silently thank God. This marked the beginning of a tradition that would continue without opposition for the next seven years.



Photo of Coach Kennedy during the Gulf War.

*Pictured from left to right U.S. Marines: Jurado, Joseph Kennedy, Rodriguez, Wallace; Bottom: Luna.*





## Trouble Arises



In 2015, Coach Kennedy received **a letter from the Superintendent of Bremerton School District** demanding that he stop praying after football games. This shocking notification came shortly after a school administrator

complimented Coach Kennedy's leadership and the great example he set for the team through his prayers.

What's more, the letter stipulated that Coach Kennedy could no longer include religious expression or prayer while coaching football. The School District unlawfully ordered him to not visibly bow his head or kneel, as this would be perceived as "religious." No religious activity, even "fleeting," would be tolerated. He was told that any remotely religious expression would have to be done where nobody could see him.

## First Liberty Joins the Case



**The First Amendment protects religious activity that is initiated by individuals acting privately**, like Coach Kennedy during his post-game prayers  
**(Everson v. Board of Education, 1947)**

**The government may not restrict the speech of private individuals** for the sole reason that their speech is religious  
**(Good News Club v. Milford Cent. Sch., 2001)**

Speech by a public employee—including a teacher—**does not always represent or appear to represent the views of the state**  
**(Tucker v. California Department of Education, 1996)**

In response, **First Liberty sent the School District a letter** explaining that teachers and administrators do not lose their personal rights to express their religious beliefs upon entering the schoolhouse—or the football field. The letter expounded on recent federal court decisions pertaining to this issue, and called attention to the following aspects of **Coach Kennedy's rights:**

**Teachers and students do not shed their constitutional rights** to freedom of speech or expression upon entering the schoolhouse  
**(Tinker v. Des Moines Independent School District, 1969)**



### Foul on the Play: Holding

"The Bremerton School District told Coach Kennedy he could talk to his players, he could talk to the fans, and he could talk to the parents. But if he talked to God, he was fired." Mike Berry, First Liberty Institute General Counsel.



First Liberty asked the school to make a religious accommodation that would allow Coach Kennedy to take 15 seconds after the game to kneel and silently thank God for his team when the players were not on the field.





## Bremerton School District's Response: No Prayer, Coach

In a **response letter**, the Bremerton School District held, "[Coach Kennedy] 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." However, the School District then stipulated that prayer of any type while serving on the field as coach constitutes an endorsement of religion by the District, and therefore "cannot be tolerated." Consequently, the District would not grant the request for even 15 seconds of private prayer time after the game.

Shortly after the exchange by First Liberty and the District, Coach Kennedy's employment contract was not renewed, and he was barred from serving as coach. The letter outlined that Kennedy could not "participate, in any capacity, in BHS football program activities." The District suspended Coach Kennedy the day before the final varsity football game of the season and refused to renew his contract, resulting in the end of his coaching career. This devastating termination could have knocked coach down for the count, but Kennedy was not about to give up in the fight against his wrongful termination.



### Foul on the Play: Unnecessary Roughness

The Bremerton School District discriminated against Coach Kennedy three times:

- 1) Banning his prayer
- 2) Suspending him
- 3) Retaliating against him by refusing to renew his contract

## From the Field to the Court: Coach's Legal Battle Begins



“That was the last time I would walk on that field.”

Coach Kennedy filed a **charge of religious discrimination** with the Equal Employment Opportunity Commission (EEOC) against the Bremerton School District. In response to Coach Kennedy's EEOC complaint, the U.S. Department of Justice issued a right-to-sue letter to Coach Kennedy.

Then, on behalf of Coach, First Liberty filed a federal **lawsuit** against the Bremerton School District. The lawsuit alleged that the School District violated Coach Kennedy's First Amendment rights to free speech and to freely ex-

press his religion when he was fired for praying. The suit sought the immediate reinstatement of Coach Kennedy, and the right to continue his quiet prayer after each game. He was not seeking any monetary damages; merely the right to freely practice his faith and coach the game he loves. Surprisingly, the federal district court dismissed the lawsuit and upheld Coach Kennedy's termination. First Liberty quickly **filed an appeal** with the United States Court of Appeals for the Ninth Circuit, seeking to reinstate Coach Kennedy.







# Huddle Up: Who's on Team Kennedy?

Coach Kennedy's case has received national attention and support from political and religious leaders including President Trump and Franklin Graham, hall of fame football coach Bobby Bowden, and the former NFL player Steve Largent. His bench is stacked with powerful individuals who have backed Coach since his termination.

## The Roster:



### Franklin Graham

**Position:** President and CEO of Samaritan's Purse

**Stance:** Franklin Graham supported Coach on [Twitter](#) and [Facebook](#), calling for coaches nationwide to kneel in prayer in support of Coach Kennedy. He added, "Let's show our support for Coach Kennedy, a former Marine who didn't back down on prayer."



### Paul Clement

**Position:** Former U.S. Solicitor General and a partner at Kirkland & Ellis LLP

**Stance:** The Former Solicitor General acknowledged the significance of the case and stated, "This is an important case that could determine whether teachers and coaches lose their First Amendment rights at the schoolhouse gates."



### Tony Dungy

**Position:** Former Head Coach for the Tampa Bay Buccaneers and Indianapolis Colts

**Stance:** Dungy stood by Coach Joe and was upset on Twitter when Coach was fired for his prayer, stating, "He didn't force it on anyone. He merely prayed."

## Texas High School Coaches Association



**Positon:** Represents 21,000 football coaches across Texas.

**Stance:** Urged the Supreme Court to consider the case of Coach Kennedy.

[Click here for Amicus Brief](#)

## Football Legends Rally in Support of Coach Kennedy



### Steve Largent

**"Coaches like Joe Kennedy are why I made it in the NFL."**

**Position:** Pro-Football Hall of Famer and former U.S. Congressman

**Stance:** Speaking to the role of coaches' conduct on the field, Largent, a former member of the Seattle Seahawks, wholeheartedly backed Kennedy, stating in an [amicus brief](#), "Any attendee of sporting events knows that players and coaches of all ages make, and have long made, their own personal statements ... No reasonable observer would conclude that [Kennedy's] quiet, prayerful post-game observation was school-endorsed speech by a public employee."



### Bobby Bowden

**"No coach should have to set down their faith when they pick up a whistle."**

**Position:** Former Head Coach of the Florida State University Football team 1976-2009

**Stance:** Legendary college football coach Bobby Bowden backed Joe Kennedy in an amicus brief. Drawing from his experience as a college football coach, Bowden [stated](#), "Those of us lucky enough to coach know what a blessing it is to have the opportunity to improve the lives of others by teaching. ... We teach commitment to a purpose higher than self, tenacity in the face of adversity, and other skills necessary for success in life." He continues, "No matter what their decision is, in my book, Coach Kennedy is winning where it counts."



Senator John Cornyn



Senator James Lankford



Congresswoman Vicky Hartzler  
and Members of Congress

**Positions:** U.S. Senators and U.S. Representatives

**Stance:** Urged the Supreme Court to consider the case of Coach Kennedy.

[Click here for Amicus Brief](#)





## Moving the Chains: The U.S. Supreme Court Denies Appeal, but Offers Hope

After an initial loss at the Ninth Circuit Court of Appeals, attorneys for First Liberty Institute and Kirkland & Ellis LLP filed a petition for writ of certiorari with the Supreme Court of the United States on behalf of Coach Joe Kennedy, in hopes that the nine Justices would reverse the Ninth Circuit decision.

The Supreme Court ultimately decided not to review the case, but in a relatively rare move, four of the court's justices—**Samuel Alito, Clarence Thomas, Neil Gorsuch, and Brett Kavanaugh**—issued a statement explaining that the court could not make a decision at that time on whether to hear Kennedy's appeal because important factual questions remained unresolved. Depending on how those questions were answered, the court may revisit the case.

In the Supreme Court Denial of Cert Statement,

**Justice Alito stated,**  
"If this case were before us as an appeal within our mandatory jurisdiction, our clear obligation would be to vacate the decision below..."

The justices expressed serious concern over the lower court's decision and its implications for the First Amendment rights of teachers and coaches.

**Alito further noted,**  
"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."

First Liberty is resetting the game clock by continuing Coach Kennedy's case, all the way back to the Supreme Court if necessary. This time we're seeking to restore liberty to the Free Exercise Clause, and the Supreme Court has given us hope for a future victory.

## The Ninth Circuit: The Hope For a Future



Coach Joe Kennedy

*"I fought in the Marines for our freedom, I never thought I would have to go through the court to protect my own."*

After the Supreme Court sent the case down to the lower courts, First Liberty is bringing the case back to the 9th Circuit Court of Appeals.

With arguments on January 25th, 2021, Coach Kennedy's attorneys are seeking a restoration of the original intent of the Free Exercise Clause.

Coach Joe is free to live out his faith based on the First Amendment.

There is no denying that what was done to Coach is unconstitutional and unjust. Whether we get a victory at the Ninth Circuit or not, First Liberty will continue to stand for the right of all Americans to live out their faith.

## Restoring the Free Exercise Clause

Several decades ago, the Supreme Court issued a ruling in the case of *Employment Division v Smith*. This case effectively gutted the Free Exercise Clause at the federal level. Since this ruling, an entire generation of American citizens have faced ongoing attacks on this essential right.

After gaining a victory for the Bladensburg Cross, which restored the original intent of the Establishment Clause, First Liberty is now seeking to do the same with the Free Exercise Clause. Coach Kennedy's case is the perfect case poised to do just that.

With the Supreme Court indicating that it might review the *Smith* case, Coach Joe's case may be the one to give us more religious freedom than we've ever had in our lifetimes!





## So What's Next?



**KELLY SHACKELFORD, ESQ.**  
*PRESIDENT AND CEO*

We have good reason to believe the Supreme Court might revisit the case and rule in Kennedy's favor.

Right now, we are arguing the case yet again at the Ninth Circuit Court of Appeals. While we hope for a better outcome than last time, our hopes don't rest on this appellate court alone.

We anticipate that the Ninth Circuit will most likely uphold its previous decision against Kennedy—causing us to return to the U.S. Supreme Court. Then we can hope that SCOTUS finally agrees to take the case, right the Ninth Circuit's wrong, and deliver justice for Coach Kennedy once and for all.

We are eager to give the Supreme Court another opportunity to protect the right of every American to engage in personal religious expression, including praying in public, without fear of getting fired. In time, we are confident Kennedy will be able to return to the field, and that the First Amendment rights of coaches and teachers will be restored—not only for Coach Kennedy's sake, but for the sake of every person of faith in America.



“You don't have to hide your faith.”

**Coach Joe Kennedy**



# Last line of Defense, Greatest Hope for Victory.

