



*(Coach Kennedy at the Bremerton High School football field.  
Photo credit: First Liberty Institute. May be republished.)*

## **Coach Kennedy Asks Supreme Court to Reverse Another “Troubling” Ninth Circuit Decision Preventing Him from Taking a Knee**

*Attorneys ask Justices to reinstate football coach who was fired after praying quietly and alone for 15-30 seconds after football game*

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**Washington, D.C.**—Attorneys for First Liberty Institute and Kirkland & Ellis LLP today filed a petition for writ of certiorari with the Supreme Court of the United States on behalf of former high school football coach Joe Kennedy, asking the Justices to reverse a lower court decision that allowed a school district to fire him because fans and students could see him take a knee in quiet or silent prayer after football games.

You can read the petition [here](#).

“No American should be forced to choose between their faith and the job they love,” said Kelly Shackelford, President, CEO, and Chief Counsel at First Liberty. “The Ninth Circuit’s opinion threatens the rights of millions of Americans who simply want to be able to freely exercise their faith without fear of losing their job. We hope the Supreme Court will right this wrong and restore Coach Kennedy to the football field where he belongs.”

As Paul Clement, former U.S. Solicitor General, partner at Kirkland & Ellis LLP, and First Liberty volunteer attorney wrote in the Petition, the Ninth Circuit’s ruling “converts practically everything public-school teachers do or say during school hours or after-hours functions into government speech that the school may prohibit, thereby ensuring that teachers in the Ninth Circuit really do shed their constitutional rights to freedom of speech and expression at the schoolhouse gate.”

The Supreme Court declined to review the case in January 2019, allowing the lower courts to continue to develop the factual record. But four justices (Justice Alito joined by Justices Thomas, Gorsuch, and Kavanaugh) issued a statement signaling that the Court would be open to hearing the case with a fully developed record, saying in part, “The Ninth Circuit’s understanding of the free speech rights of public school teachers is troubling and may justify review in the future.”

The case then returned to the district court for further review where, in January 2020, U.S. District Court for the Western District of Washington granted the Bremerton (WA) School District’s motion for summary judgment. Kennedy’s attorneys appealed to the U.S. Court of Appeals for the Ninth Circuit, where a three-judge panel sided with the school district earlier this year. The full Ninth Circuit declined to review that decision over the dissenting opinions of eleven judges.

In its petition, Kennedy’s attorneys state, “The Ninth Circuit not only doubled down on its ‘troubling’ government-speech holding, but reached the stunning conclusion that the school district had a constitutional *duty* to prohibit Kennedy’s prayer—even if he offered it as a private citizen—because failure to do so purportedly would have violated the Establishment Clause. Adding insult to constitutional injury, the Ninth Circuit created the ultimate chilling effect by making clear that, in its view, Kennedy had no one to blame but himself for the loss of his First Amendment rights because he purportedly sought to vindicate them in too ‘pugilistic’ a fashion.” The attorneys add, “None of that is remotely compatible with any sensible balance between private religious expression and the public schools, with this Court’s precedent, or with the free-speech and free-exercise principles upon which our Nation is built.”

Americans United for Separation of Church and State represent the Bremerton School District.

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### **About First Liberty Institute**

[First Liberty Institute](https://www.firstliberty.org/) is a non-profit public interest law firm and the largest legal organization in the nation dedicated exclusively to defending religious freedom for all Americans.

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