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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

10 JOSEPH A. KENNEDY,

11 *Plaintiff,*

12 v.

13 BREMERTON SCHOOL DISTRICT,

14 *Defendant.*

CASE NO. 3:16-CV-05694-RBL

**DECLARATION OF JOSEPH A.
KENNEDY IN SUPPORT OF
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

15 I, Joseph A. Kennedy, pursuant to 28 U.S.C. § 1746, declare as follows:

- 16 1. I have personal knowledge that the facts stated herein are true.
- 17 2. I have been employed as a football coach at Bremerton High School ("BHS") since 2008.
- 18 I have worked at BHS as an assistant coach for the varsity football team and the head
- 19 coach for the junior varsity football team.
- 20 3. I was raised in the state of Washington. I played football and wrestled at Naches Valley
- 21 High School, near Yakima, Washington.
- 22 4. I moved to Bremerton to complete high school and graduated from BHS in 1988.
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- 1 5. After graduating from high school, I served on active duty in the United States Marine
2 Corps from 1988 to 2006. I served in the Gulf War as a diesel mechanic for the Third
3 Battalion, Eleventh Marine Corps Regiment.
- 4 6. After the Gulf War, I served in numerous leadership roles in the Marine Corps, including
5 training non-commissioned officer, substance abuse control officer, company gunnery
6 sergeant, and company first sergeant. I retired from the Marine Corps in 2006 as a
7 gunnery sergeant.
- 8 7. Before I was hired as a football coach at BHS, I had extensive experience coaching and
9 mentoring high school students on a volunteer basis. I had previously worked as a
10 volunteer football and wrestling coach at local high schools, including in Bellingham,
11 Washington; Lewiston, Idaho; and Boise, Idaho.
- 12 8. Before the fall of 2015, I received overwhelmingly positive performance evaluations
13 from my supervisors at Bremerton School District ("BSD"). Each of my prior
14 performance evaluations recommended that I be rehired for the following year.
- 15 9. While I am coaching BHS football games, I often wear a shirt or jacket with a BHS logo.
16 The clothing I wear while coaching BHS football games does not identify me as a BHS
17 coach. I either purchased that clothing myself, or it was given to me by the booster club,
18 which is composed of BHS parents. Many BHS parents and fans attend football games
19 wearing shirts or jackets that are substantially similar or identical to mine.
- 20 10. I am a practicing Christian. My sincerely held religious beliefs require me to engage in
21 brief, private religious expression at the conclusion of BHS football games.
- 22 11. After watching the film *Facing the Giants* (2006), I made a commitment to God that I
23 would give thanks through prayer, at the end of each game, for what the players had
24

accomplished and for the opportunity to be part of their lives through the game of football.

12. After the game is over, and after the players and coaches from both teams have met to shake hands at midfield, I feel called to pause on the playing field to engage in private religious expression. I take a knee at the 50-yard line and offer a brief, quiet prayer of thanksgiving for player safety, sportsmanship, and spirited competition. My prayer lasts approximately 30 seconds.

13. I am not motivated to pray after football games in order to push my religious beliefs on BHS players, coaches, or anyone else. Instead, I offer a brief prayer of thanksgiving as part of the covenant I made with God before I started coaching at BHS.

14. Because my prayer lifts up the players and recognizes their hard work and sportsmanship during the game, my sincerely held religious beliefs require me to pray on the field where the game was played.

15. My private religious expression is outside the ordinary scope of my responsibilities as a BSD employee.

16. I have engaged in private religious expression at the conclusion of football games since 2008, when I first started work as a BHS football coach.

17. Initially, in 2008, I prayed alone. After several games where I prayed alone, some BHS players asked whether they could join me. I responded, "This is a free country. You can do what you want."

18. Over time, the number of players who gathered near me after the game grew to include the majority of the team. The number of players who participated varied from game to game. Sometimes there were no players who gathered, and I prayed alone. Sometimes BHS players invited players from the opposing team to join.

1 19. Eventually, I began giving short motivational speeches to the players after the game.
2 Although I would never use exactly the same words, my post-game speeches would be
3 something like this: "Lord, I lift these guys up for what they just did on the field. They
4 battled for 48 minutes and even though they came here as rivals, they can leave here as
5 friends. It doesn't matter what our beliefs are—we believe in our team and we believe in
6 each other."

7 20. In the past, I sometimes participated in pre- and post-game locker room prayers that the
8 BHS football team engaged in as a matter of school tradition. This activity predated my
9 involvement with the program.

10 21. My sincerely held religious beliefs do not require me to lead any prayer, involving
11 students or otherwise, before or after BHS football games. I immediately stopped
12 participating in all locker room prayers upon receiving instructions to do so.

13 22. I never coerced, required, or asked any student to pray with me at the conclusion of
14 games. For example, I never told any student that it was important that they participate in
15 any religious activity. And I never pressured or encouraged any student to join me in my
16 private religious expression.

17 23. I witnessed other BHS coaches engage in religious expression at the beginning and end of
18 BHS football games. For example, BHS Assistant Coach David Boynton engaged in a
19 Buddhist chant near the 50-yard line at the conclusion of many BHS football games.

20 24. To my knowledge, Coach Boynton was never suspended, dismissed, or subject to any
21 other adverse employment action based on his religious expression.

22 25. BSD has previously allowed unrestricted public access to the BHS football field at the
23 conclusion of football games. Parents, fans, and members of the community frequently
24 walk onto the field to congratulate players and socialize after the game.

26. BHS Athletic Director Jeff Barton told me that the BHS football field is a public space that cannot be closed to members of the public at the conclusion of football games.
27. I do not pray at the conclusion of BHS football games in order to attract public attention or acclaim. Instead, I am required by my commitment to God to give thanks through prayer on the playing field at the conclusion of each game.
28. On September 17, 2015, BSD sent me a letter laying out certain guidelines for my private religious expression. That letter stated that my religious expression should either be non-demonstrative if students were also engaged in religious conduct, or it should occur while students were not engaged in religious conduct.
29. After receiving BSD's letter, I temporarily stopped engaging in religious expression immediately after BHS football games. I was struggling to figure out how to both follow the rules and honor my covenant with God.
30. At the conclusion of the game on September 18, 2015, I gave a short motivational speech to the players that included no mention of religion or faith. On my drive home, I felt dirty because I knew that I had broken my commitment to God. I turned my car around and went back to the field, where I waited until everyone else had left the stadium. Then I walked to the 50-yard line, where I knelt to pray alone.
31. On October 14, 2015, Hiram Sasser, my attorney, sent a letter to BSD Superintendent Aaron Leavell and members of the BSD School Board. That letter explained that I am required by my sincerely held religious beliefs—my commitment to God—to pray after BHS football games. In that letter, I formally requested a religious accommodation that would affirm my right to engage in a brief, quiet prayer at the 50-yard line at the conclusion of BHS games.

32. At the conclusion of the football game on October 16, I walked to midfield for the customary handshake with the opposing team. I waited until the BHS players were walking toward the stands to sing the post-game fight song. Then I knelt at the 50-yard line, closed my eyes, and prayed a brief, silent prayer.

33. While I was kneeling with my eyes closed, coaches and players from the opposing team, as well as members of the general public and media, spontaneously joined me on the field and knelt beside me.

34. On October 23, 2015, just hours before the football game scheduled for that night, BSD sent me a second letter. That letter denied my request for a religious accommodation and forbid me from engaging in any demonstrative religious activity that could be observed by students or the public.

35. In its October 23, 2015 letter, BSD claimed for the first time that my religious expression drew me away from my work. But BSD had never formally or informally assigned me any post-game supervisory obligations that would prohibit me from engaging in religious expression lasting no more than 30 seconds.

36. BSD's October 23, 2015 letter suggested that I should abandon my typical practice and instead leave the field and go to a private location in the school building, athletic facility or press box to pray. These locations are dozens or hundreds of yards away from the football field. Traveling to any of these locations would take me away from my players for a significantly longer period of time than 30 seconds. BSD did not explain how my religious expression would be accommodated at away games—half of the games each season—as BSD has no control over the buildings and facilities in other school districts.

37. At the conclusion of the BHS varsity football game on October 23, 2015, I knelt alone at the 50-yard line and bowed my head for a brief, quiet prayer.

38. On October 28, 2015, BSD placed me on paid administrative leave and prohibited me from participating in any BHS football program activities in any capacity. BSD's letter stated that it was taking these actions against me because I had engaged in demonstrative religious conduct while I was still on duty as an assistant football coach.

39. I was suspended the day before Senior Night, the last game of the regular season. I had to watch that game from the stands. Not being able to coach my team in the final game of the season was emotionally very difficult for me.

40. In November 2015, BSD retaliated against me by giving me a poor performance evaluation for the first time in my BHS coaching career. The evaluation recommended that I not be rehired because I had supposedly failed to follow district policy and failed to supervise players after games. Subsequently, I was not rehired for the following year.

41. By suspending and then firing me from my job as a BHS football coach, BSD has caused me significant and continuing harm. BSD has deprived me of the opportunity to coach and mentor young men that I care deeply about. As a high school football coach, I only have the opportunity to be part of these players' lives for a short period of time. It is a tremendous blessing to be able to be part of their lives through football, and to help them overcome challenges and emerge as stronger people.

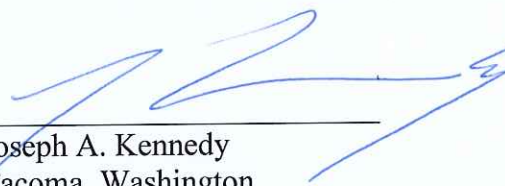
42. I have never coached at BHS simply for the money. No amount of money can compensate me for losing the ability to mentor and have a positive impact on the lives of my players.

43. There are approximately 12 high school seniors on the BHS varsity roster for the 2016 season that I have coached since they were freshmen. Without this Court's intervention, I will lose the opportunity to participate in their last season of high school football.

1 44. I would love nothing more than to get my job back and be back out on the field coaching
2 football again at BHS. My goal is simply to act in accordance with my faith and to coach
3 high school football in my hometown.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on this 23rd day of August, 2016.

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9 Joseph A. Kennedy
10 Tacoma, Washington
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