

The US Supreme Court has adjusted its standards on when public school employees can engage in religious speech. This week, in *Kennedy v. Bremerton School District*, the court overturned a 1970s case regarding behavior that violates the First Amendment's Establishment Clause, broadening the ability of school employees to engage in religious activity, so long as it is not part of their official duties.

The First Amendment prohibits the government from establishing a religion, including by endorsing religious conduct, but it also permits people to share their religious views. In *Kennedy*, the court tries to set a standard for what is allowed when those rights intersect. Here, a football coach at a public school in Washington prayed "quietly" on the 50-yard line after games. Though Kennedy, the coach in question, started his tradition by praying alone, students eventually joined in, with sometimes more than half the team joining him in prayer, as well as coaches and players from the opposing team. After receiving complaints that some students felt compelled to join in the post-game prayers, the district asked Kennedy to pray in a more private setting. Kennedy continued to pray at midfield after games, and the district suspended him and placed him on administrative leave.

In a 6-3 decision, the Supreme Court held that this suspension violated the coach's First Amendment rights. While school employees cannot engage in religious speech as part of their official duties, they are free to do so while not engaged in their job duties. The court stressed that all coaches had some time after games to attend to personal matters like speaking with friends, taking phone calls or checking emails. Because the district singled out Kennedy's religious expression as an objectionable use of this quasi-personal time, it violated Kennedy's First Amendment rights. Though Kennedy was technically on duty, the court highlighted that the important question is whether Kennedy was acting within the scope of his job duties while offering his prayers. Because Kennedy was praying in the brief personal time that all coaches get, it was not within the scope of his job duties, and the district, therefore, cannot prohibit it.

In *Kennedy*, the court abandoned its previous test for evaluating religious activity of school employees. Now, employees can engage in religious speech, outside of the scope of their work, so long as attendance is not mandatory and students do not feel required or expected to participate. Things like incorporating religious messages into classroom instruction and religious speech at mandatory events like assemblies are still unconstitutionally coercive under the First Amendment. However, if employees are not engaged with their official duties, districts cannot prohibit them from engaging in religious activity, or force them to do so in a more private space.

For example, a teacher eating their own lunch in a crowded cafeteria could bow their head in silent prayer without violating the Establishment Clause, but a teacher still may not pause for a moment of prayer at the beginning of a class period.

Rather than setting a standard for what is allowable when free speech and freedom of religion intersect with a ban on establishing religion, the court concludes there was no tension in this case. Because Kennedy was praying alone during a break from his official duties, his activity could not be seen as government-sponsored speech, and, therefore, cannot be limited by the school. The court reasoned that it does not matter that Kennedy engaged in his religious activity in the workplace, because if any and all workplace speech was paramount to government-sponsored speech, it would be subject to government control. To allow districts to control private religious expression would jeopardize freedom of religion rights for all employees.

While the *Kennedy* decision loosens restrictions on public employee conduct, it does not amount to blanket permission for religious expression in public schools. Schools must still monitor closely any situations that could be considered to coerce students' participation in religious exercise, and/or that happen in the course of employees' duties, rather than during moments of personal time. Public schools should ensure that board policies do not single out private religious activity, explicitly or implicitly. District policies and resulting disciplinary action must be neutral as to religion, and generally applicable to all employees. Consult with your district's counsel regarding specific policy questions or disciplinary situations.

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