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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

JOSEPH A. KENNEDY,

Plaintiff,

v.

BREMERTON SCHOOL DISTRICT,

Defendant.

CASE NO.

COMPLAINT

JURY DEMAND

Plaintiff Joseph A. Kennedy (“Coach Kennedy”) brings this action for declaratory and injunctive relief in order to vindicate his constitutional and civil rights to engage in the private religious expression that is compelled by his sincerely held religious beliefs. The Bremerton School District (“BSD” or the “District”) violated those rights when it took adverse employment action against him because of that expression.

I. NATURE OF THE ACTION

1. Coach Kennedy has worked for nearly eight years as a popular and well-respected football coach at Bremerton High School (“BHS”).

2. This case is about Coach Kennedy’s right to pray quietly and alone at the conclusion of BHS football games, and to do so on the field where the game was played. Coach Kennedy’s sincerely held religious beliefs compel this brief, private religious expression.

3. Coach Kennedy’s practice fully complies with BSD’s written policies on “Religious-Related Activities and Practices,” which nowhere prohibit religious expression by on-

1 duty school employees. Board Policy 2340, Aug. 13, 1992, Ex. A. It also complies with BSD’s
2 initial letter to Coach Kennedy, which prescribed certain guidelines for his religious expression
3 while reaffirming that “you and all District employees possess fundamental free exercise and
4 free expression rights under the First Amendment.” Letter to Coach Kennedy, Sept. 17, 2015,
5 Ex. B, at 2.

6 4. BSD publicly admitted that there is “*no evidence*” that students have ever been
7 “coerced” to pray with Coach Kennedy. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 1
8 (emphasis added). BSD also admitted that Coach Kennedy has never “actively encouraged, or
9 required, [student] participation” in any religious activity. Letter to Coach Kennedy, Sept. 17,
10 2015, Ex. B, at 2.

11 5. BSD further conceded that Coach Kennedy’s religious expression is “fleeting”—
12 lasting no more than 30 seconds—and that no student, parent, or member of the community ever
13 complained about that conduct in Coach Kennedy’s eight years of coaching at BHS. Letter to
14 Coach Kennedy, Oct. 23, 2015, Ex. E, at 2; BSD Statement and Q&A, Oct. 28, 2015, Ex. G,
15 at 3–4.

16 6. But BSD was not satisfied with Coach Kennedy’s full “compli[ance]” with its
17 “directives not to intentionally involve students in his on-duty religious activities.” BSD
18 Statement and Q&A, Oct. 28, 2015, Ex. G, at 2. Instead of abiding by its written policies—and
19 its initial letter to Coach Kennedy—BSD changed the rules.

20 7. In a sweeping new directive, BSD purported to prohibit on-duty school employees
21 from engaging in any and all “*demonstrative religious activity*” that is “readily observable to (if
22 not intended to be observed by) students and the attending public.” Letter to Coach Kennedy,
23 Oct. 23, 2015, Ex. E, at 3 (emphasis added).

24 8. When Coach Kennedy engaged in the brief, quiet prayer that is required by his
25 faith after the next BHS football game, BSD suspended him. The District later retaliated against
26 Coach Kennedy by giving him a poor performance evaluation—for the first time in his entire
27 BHS coaching career—and then firing him because he purportedly “failed to follow district
28 policy.” BSD Coaching Evaluation Form, Nov. 20, 2015, Ex. J.

1 9. BSD's revised directive, which purports to ban any "demonstrative religious
2 activity" that is "readily observable" to students or members of the public, is baldly
3 unconstitutional. On its face, BSD's policy would prohibit all on-duty school employees, while
4 in view of any student or member of the community, from making the sign of the cross, praying
5 towards Mecca, or wearing a yarmulke, headscarf, or a cross. After all, each of those actions is
6 "demonstrative" religious expression and would be interpreted as such.

7 10. BSD's actions violate Coach Kennedy's First Amendment rights to free speech
8 and free exercise, as well as his rights under Title VII of the Civil Rights Act of 1964, which
9 prohibits discrimination on the basis of religion.

10 11. Coach Kennedy brings this Complaint to vindicate his constitutional and civil
11 rights to act in accordance with his sincerely held religious beliefs by offering a brief, private
12 prayer of thanksgiving at the conclusion of BHS football games.

13 II. PARTIES

14 12. Plaintiff Joseph A. Kennedy resides in Port Orchard, Washington.

15 13. Defendant Bremerton School District is a school district located in Bremerton,
16 Washington.

17 III. JURISDICTION

18 14. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This
19 action arises under the Constitution and laws of the United States; 42 U.S.C. § 1983; and Title
20 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII").

21 15. Coach Kennedy also seeks a declaration of his rights in this case of actual
22 controversy under 28 U.S.C. § 2201.

23 16. This Court has personal jurisdiction over Bremerton School District because it is
24 located in Kitsap County, Washington, which is within the area encompassed by the United
25 States District Court for the Western District of Washington.

26 IV. VENUE

27 17. Venue is proper in this court under 28 U.S.C. § 1391.
28

1 18. Defendant is located in Bremerton, Washington, which is within the area
2 encompassed by the United States District Court for the Western District of Washington. A
3 substantial portion of the actions and conduct complained of occurred in Bremerton,
4 Washington.

5 **V. STATEMENT OF FACTS**

6 **A. Coach Kennedy's Background and Employment History**

7 19. Since 2008, Coach Kennedy has been employed as a football coach at BHS. He
8 has worked as an assistant coach for the BHS varsity football team and the head coach for the
9 BHS junior varsity football team.

10 20. Coach Kennedy is currently employed by the United States Navy at the Puget
11 Sound Naval Shipyard and Intermediate Maintenance Facility in Bremerton, Washington. The
12 claims at issue in this action relate only to Coach Kennedy's employment as a football coach
13 with BSD.

14 21. Coach Kennedy was raised in the State of Washington. After playing football and
15 wrestling at Naches Valley High School, near Yakima, Washington, he moved to Bremerton to
16 complete high school. Coach Kennedy graduated from BHS in 1988.

17 22. After graduating high school, Coach Kennedy served on active duty in the United
18 States Marine Corps from 1988 to 2006. He is a veteran of the Gulf War, where he served as a
19 diesel mechanic for the Third Battalion, Eleventh Marine Corps Regiment.

20 23. After the Gulf War, Coach Kennedy served in numerous leadership roles in the
21 Marine Corps, including training non-commissioned officer, substance abuse control officer,
22 company gunnery sergeant, and company first sergeant. Coach Kennedy retired from the Marine
23 Corps in 2006 as a gunnery sergeant.

24 24. Coach Kennedy had extensive experience coaching and mentoring high school
25 students on a volunteer basis before he was hired as a football coach at BSD. He had previously
26 worked as a volunteer football and wrestling coach at local high schools, including in
27 Bellingham, Washington; Lewiston, Idaho; and Boise, Idaho. Joseph A. Kennedy Resume,
28 Ex. H.

1 25. Upon information and belief, BSD initially hired Coach Kennedy in part based on
2 the strength of his leadership, his teamwork, and his experience mentoring student athletes.

3 26. Prior to fall 2015, Coach Kennedy received overwhelmingly positive performance
4 evaluations, which confirm that he “d[id] an excellent job mentoring players and building
5 character in them,” that “[h]is work with our players . . . is a great asset to our community,” and
6 that “[h]is enthusiasm and positive attitude is great for team [morale].” *See, e.g.*, BSD Coaching
7 Evaluation Form, Dec. 2012, Ex. I; BSD Coaching Evaluation Form, Mar. 2012, Ex. I; BSD
8 Coaching Evaluation Form, Nov. 2009, Ex. I. Each of Coach Kennedy’s prior evaluations
9 recommended that he be rehired for the following year.

10 **B. Coach Kennedy’s Religious Beliefs and Religious Expression**

11 27. Coach Kennedy is a practicing Christian. He is compelled by his sincerely held
12 religious beliefs to engage in brief, private religious expression at the conclusion of BHS football
13 games.

14 28. Coach Kennedy has engaged in private religious expression at the conclusion of
15 football games since 2008, when he first started work as a BHS football coach. After watching
16 the film *Facing the Giants* (2006), Coach Kennedy made a covenant with God that he would
17 give thanks through prayer, at the end of each game, for what the players had accomplished and
18 for the opportunity to be part of their lives through the game of football.

19 29. After the game is over, and after the players and coaches from both teams have
20 met to shake hands at midfield, Coach Kennedy feels called to pause on the playing field to
21 engage in private religious expression. He takes a knee at the 50-yard line and offers a brief,
22 quiet prayer of thanksgiving for player safety, sportsmanship, and spirited competition. That
23 prayer lasts approximately 30 seconds.

24 30. Coach Kennedy is not motivated to engage in private religious expression in order
25 to proselytize or attract others to his religious faith. Instead, he offers a brief prayer of
26 thanksgiving as part of a covenant he made with God before he started coaching at BHS.

27 31. Because Coach Kennedy’s prayer lifts up the players and recognizes their hard
28 work and sportsmanship during the game, his sincerely held religious beliefs require him to pray

1 on the field where the game was played. His private religious expression is outside the ordinary
2 scope of his responsibilities as a BSD employee.

3 32. Initially, in 2008, Coach Kennedy prayed alone. After several games where he
4 prayed alone, some BHS players asked whether they could join him. Coach Kennedy responded,
5 “This is a free country. You can do what you want.”

6 33. Over time, the number of players who gathered near Coach Kennedy after the
7 game grew to include the majority of the team. The number of players who participated varied
8 from game to game. Sometimes there were no players who gathered, and Coach Kennedy
9 prayed alone. Sometimes BHS players invited players from the opposing team to join.

10 34. Eventually, Coach Kennedy began giving short motivational speeches to the
11 players after the game. Those speeches often involved religious content.

12 35. Some former BHS players have said that they “didn’t view it as a prayer at all,”
13 because Coach Kennedy “didn’t say ‘under God’ or anything involving religion. . . . He just
14 gave us a post-game speech.” Kelsey Harkness, “After Losing His Public School Job for
15 Praying, Coach Kennedy Speaks Out,” *The Daily Signal*, Jan. 26, 2016,
16 [http://dailysignal.com/2016/01/26/after-losing-his-public-school-job-for-praying-coach-kennedy-
17 speaks-out/](http://dailysignal.com/2016/01/26/after-losing-his-public-school-job-for-praying-coach-kennedy-speaks-out/). Another former player has said that, “I prayed because I’m Catholic, but some
18 walked off. There was never any pressure.” Christine Clarridge, “Crowd Prays with Coach as
19 He Defies School District,” *Seattle Times*, Oct. 16, 2015, [http://www.seattletimes.com/seattle-
20 news/education/scores-join-coach-in-postgame-prayer/](http://www.seattletimes.com/seattle-news/education/scores-join-coach-in-postgame-prayer/).

21 36. In the past, Coach Kennedy sometimes participated in pre- and post-game locker
22 room prayers that the BHS football team engaged in as a matter of school tradition. This activity
23 “predated [his] involvement with the program.” Letter to Coach Kennedy, Sept. 17, 2015, Ex. B,
24 at 1. Coach Kennedy’s sincerely held religious beliefs do not require him to lead any prayer,
25 involving students or otherwise, before or after BHS football games. He immediately ceased
26 participating in all locker room prayers upon receiving instructions to do so.

27 37. At all times, as BSD concedes, “[e]ach activity has been voluntary,” and there is
28 “no evidence” that students have ever been “coerced” to pray with Coach Kennedy. Letter to

1 Coach Kennedy, Sept. 17, 2015, Ex. B, at 1; BSD Statement and Q&A, Oct. 28, 2015, Ex. G,
2 at 1. Indeed, BSD has admitted that Coach Kennedy has never “actively encouraged, or
3 required, [student] participation” in any religious activity. Letter to Coach Kennedy, Sept. 17,
4 2015, Ex. B, at 1.

5 38. According to 2010 census data, approximately 73% of the people living in Kitsap
6 County do not associate with a specific religion, making the Kitsap County population one of the
7 least religious in the State. Association of Religion Data Archives, Kitsap County Membership
8 Report, http://www.thearda.com/rcms2010/r/c/53/rcms2010_53035_county_name_2010.asp.
9 But in the eight years since Coach Kennedy began working at BHS, no student, parent, or
10 member of the community ever complained about his private religious expression after football
11 games. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3–4.

12 39. Other BHS coaches have also engaged in religious expression at the beginning
13 and end of BHS football games. For example, Assistant Coach David Boynton has engaged in a
14 Buddhist chant near the 50-yard line at the conclusion of many BHS football games.

15 40. Upon information and belief, Coach Boynton has never been suspended, let alone
16 dismissed, on the basis of his religious expression.

17 41. Upon information and belief, BSD has previously allowed unrestricted public
18 access to the football field at the conclusion of BHS football games. Parents, fans, and members
19 of the community frequently walked onto the field to congratulate players, meet with players,
20 and socialize after the game. BHS Athletic Director Jeff Barton has described the football field
21 as a public space that cannot be closed to members of the public.

22 42. Coach Kennedy does not pray in order to attract public attention or acclaim.
23 Instead, he is compelled by his sincerely held religious beliefs to give thanks to God on the
24 playing field at the conclusion of each game. His goal is simply to coach high school football in
25 his hometown and to act in accordance with his religious convictions.

26 **C. BSD Issues an Initial Set of Directives for Coach Kennedy’s Religious**
27 **Expression**

28 43. Upon information and belief, BSD became aware of Coach Kennedy’s post-game

1 religious expression after an employee of another high school approached a BHS administrator
2 to compliment him on Coach Kennedy's ability to bring players from opposing teams together at
3 the conclusion of the game. BSD Statement and Q&A, Oct. 28, 2015, Ex. G, at 3-4.

4 44. On September 17, 2015, BSD Superintendent Aaron Leavell sent Coach Kennedy
5 a letter announcing that BSD "has been conducting an inquiry into whether District staff have
6 appropriately complied with Board Policy 2340, 'Religious-Related Activities and Practices.'" Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1. Board Policy 2340 provides as follows:

8 As a matter of individual liberty, a student may of his/her own volition engage in
9 private, non-disruptive prayer at any time not in conflict with learning activities.
10 School staff shall neither encourage nor discourage a student from engaging in
11 non-disruptive oral or silent prayer or any other form of devotional activity.

12 Board Policy 2340, Aug. 13, 1992, Ex. A, at 3. Notably, Board Policy 2340 does not prohibit
13 demonstrative religious expression by on-duty school employees.

14 45. BSD's September 17, 2015 letter admitted that any student participation in
15 Coach's Kennedy's post-game religious expression was entirely "voluntary," that Coach
16 Kennedy "ha[d] not actively encouraged, or required, participation" by the students, and that his
17 actions were "entirely well intentioned." Letter to Coach Kennedy, Sept. 17, 2015, Ex. B, at 1;
18 *see also* Letter to BSD Families, Staff, and Community, Sept. 17, 2015, Ex. C, at 1 ("To be clear:
19 The BSD football coaching staff's conduct has been entirely well intentioned.").

20 46. BSD nevertheless opined that Coach Kennedy's actions "would very likely be
21 found to violate the First Amendment's Establishment Clause." Letter to Coach Kennedy,
22 Sept. 17, 2015, Ex. B, at 1.

23 47. In the September 17, 2015 letter, BSD prescribed certain guidelines for Coach
24 Kennedy's private religious expression. Among other things, BSD stated that "[y]ou and all
25 District staff are free to engage in religious activity, including prayer, so long as it does not
26 interfere with job responsibilities" and is "physically separate from any student activity." *Id.*
27 at 3. BSD further stated that, "[i]n order to avoid the perception of endorsement," Coach
28 Kennedy's religious expression "should either be non-demonstrative (*i.e.*, not outwardly

1 discernable as religious activity) if students are also engaged in religious conduct, or it should
2 occur while students are not engaging in such conduct.” *Id.*

3 48. After receiving BSD’s September 17, 2015 letter, Coach Kennedy temporarily
4 stopped his practice of engaging in religious expression immediately after BHS football games.
5 At the conclusion of the game on September 18, 2015, Coach Kennedy gave a short motivational
6 speech to the players that included no mention of religion or faith.

7 49. On his drive home, Coach Kennedy felt “dirty” because he had broken his
8 covenant with God. He turned his car around and went back to the field, where he waited until
9 everyone else had left the stadium. Then Coach Kennedy walked to the 50-yard line, where he
10 knelt to pray alone.

11 **D. BSD Denies Coach Kennedy’s Request for a Religious Accommodation and**
12 **Issues a New—And More Restrictive—Set of Directives**

13 50. On October 14, 2015, Hiram Sasser, counsel for Coach Kennedy, sent a letter to
14 Superintendent Leavell and BSD Board Members Scott Rahm, J. David Rubie, Jonee Dubos,
15 Alyson Rotter, andCarolynn Perkins. Letter to BSD, Oct. 14, 2015, Ex. D, at 1. In that letter,
16 Coach Kennedy informed BSD that he is compelled by his sincerely held religious beliefs—his
17 covenant with God—to pray following each football game. *Id.* at 1–2. The letter further
18 explained that Coach Kennedy’s private religious expression is protected by the First
19 Amendment to the United States Constitution, and that there is no lawful basis to prohibit that
20 religious expression.

21 51. In response to BSD’s stated concerns about the Establishment Clause, the letter
22 explained that, under controlling U.S. Supreme Court and Ninth Circuit case law, “[t]here can be
23 no legitimate concern that the District is somehow establishing religion because it merely
24 permits one of its coaches . . . to say a short personal prayer after a football game.” *Id.* at 4.

25 52. In his October 14, 2015 letter, Coach Kennedy formally requested a religious
26 accommodation under Title VII of the Civil Rights Act that would affirm his right to engage in a
27 brief, quiet prayer at the 50-yard line at the conclusion of BHS games. *Id.* at 1, 6. Coach
28

1 Kennedy also informed BSD that, beginning on October 16, 2015, he would continue his
2 practice of saying a brief, private prayer following BHS football games. *Id.* at 6.

3 53. At the conclusion of the football game on October 16, Coach Kennedy walked to
4 midfield for the customary handshake with the opposing team. He waited until the BHS players
5 were walking toward the stands to sing the post-game fight song. Then he knelt at the 50-yard
6 line, closed his eyes, and prayed a brief, silent prayer.

7 54. While Coach Kennedy was kneeling with his eyes closed, coaches and players
8 from the opposing team, as well as members of the general public and media, spontaneously
9 joined him on the field and knelt beside him.

10 55. On October 23, 2015, just hours before the football game scheduled for that night,
11 Superintendent Leavell sent Coach Kennedy a second letter that “emphasize[d] [his] appreciation
12 for [Coach Kennedy’s] efforts to comply with the September 17 directives,” and acknowledged
13 that Coach Kennedy’s religious expression on October 16 was “fleeting.” Letter to Coach
14 Kennedy, Oct. 23, 2015, Ex. E, at 1–2.

15 56. Nonetheless, BSD went on to deny Coach Kennedy’s request for a religious
16 accommodation and opine that his “overtly religious conduct” was prohibited by the
17 Establishment Clause. *Id.* at 2.

18 57. In its October 23, 2015 letter, BSD claimed for the first time that Coach
19 Kennedy’s religious expression—although “fleeting”—nonetheless “drew [him] away from [his]
20 work,” including certain post-game supervisory tasks. *Id.* But BSD had never formally or
21 informally assigned any post-game supervisory obligations that would prohibit Coach Kennedy
22 from engaging in “fleeting” religious expression lasting no more than 30 seconds—a shorter
23 period of time than would be required for a trip to the bathroom.

24 58. Instead, BSD invoked these alleged post-game supervisory tasks to discourage
25 Coach Kennedy’s religious expression and discriminate against him on that basis.

26 59. BSD’s October 23, 2015 letter further suggested that that Coach Kennedy should
27 abandon his typical practice and instead leave the field and go to a “private location within the
28 school building, athletic facility or press box” in order to pray. *Id.* at 3. That invitation belies

1 any concerns about post-game supervision, since traveling to a location dozens or hundreds of
2 yards away would obviously take Coach Kennedy away from his players for a significantly
3 longer period of time.

4 60. By suggesting that Coach Kennedy should pray in a “private location” that is
5 physically separated from his players, BSD effectively admitted that post-game supervisory
6 obligations are no reason to prohibit Coach Kennedy’s religious expression.

7 61. BSD’s proposal also failed to accommodate Coach Kennedy’s sincerely held
8 religious beliefs, which compel him to pray on the playing field as he gives thanks for player
9 sportsmanship and safety during the game that has just concluded.

10 62. The prohibitions laid out in BSD’s October 23, 2015 letter are significantly
11 broader than those contained in its initial letter. The September 17, 2015 letter affirmed Coach
12 Kennedy’s right to “engage in religious activity, including prayer” so long as it “does not
13 interfere with job responsibilities” and is “physically separate from any student activity.” Letter
14 to Coach Kennedy, Sept. 17, 2015, Ex. B, at 3. The District’s October 23, 2015 letter, however,
15 forbid Coach Kennedy from engaging in any “demonstrative religious activity” that is “readily
16 observable to (if not intended to be observed by) students and the attending public.” Letter to
17 Coach Kennedy, Oct. 23, 2015, Ex. E, at 3.

18 63. At the conclusion of the BHS varsity football game on October 23, 2015—the
19 same day he received the District’s second letter—Coach Kennedy knelt alone at the 50-yard line
20 and bowed his head for a brief, quiet prayer.

21 **E. BSD Places Coach Kennedy on Administrative Leave and Prohibits Him**
22 **from Participating in BHS Football Activities**

23 64. On October 28, 2015, BSD placed Coach Kennedy on paid administrative leave
24 and prohibited him from “participat[ing], in any capacity, in BHS football program activities.”
25 Letter to Coach Kennedy, Oct. 28, 2015, Ex. F. The District’s stated reason for these adverse
26 employment actions was that Coach Kennedy had “engag[ed] in overt, public and demonstrative
27 religious conduct while still on duty as an assistant football coach.” *Id.*

1 65. BSD summarized its purported rationale for taking adverse employment action
2 against Coach Kennedy in a public document entitled “Bremerton School District Q&A
3 Regarding Assistant Football Coach Joe Kennedy.” BSD Statement and Q&A, Oct. 28, 2015,
4 Ex. G. The District stated that it had placed Coach Kennedy on administrative leave because he
5 “engag[ed] in overt, public religious displays on the football field while on duty as a coach.” *Id.*
6 at 1. At the same time, the District conceded that Coach Kennedy “has complied with [BSD’s]
7 directives not to intentionally involve students in his on-duty religious activities.” *Id.* at 2.

8 66. Upon information and belief, although BHS Assistant Coach David Boynton has
9 engaged in a Buddhist chant at the 50-yard line at the conclusion of many BHS football games—
10 and has continued to do so after BSD issued its October 23, 2015 letter—BSD did not take
11 adverse employment action against Coach Boynton on the basis of his religious expression.

12 **F. BSD Retaliates Against Coach Kennedy By Giving Him a Poor Performance**
13 **Evaluation and Failing to Re-Hire Him**

14 67. Prior to fall 2015, Coach Kennedy received overwhelmingly positive performance
15 evaluations. *See, e.g.*, BSD Coaching Evaluation Form, Dec. 2012, Ex. I (Coach Kennedy “d[id]
16 an excellent job mentoring players and building character in them”); BSD Coaching Evaluation
17 Form, Mar. 2012, Ex. I (“[h]is work with our players . . . is a great asset to our community”);
18 BSD Coaching Evaluation Form, Nov. 2009, Ex. I (“[h]is enthusiasm and positive attitude is
19 great for team [morale]”). Each of those prior performance evaluations recommended that
20 Coach Kennedy be rehired for the following year.

21 68. In November 2015, however, Coach Kennedy received a poor performance
22 evaluation for the first time in his BHS coaching career. BSD Coaching Evaluation Form, Nov.
23 20, 2015, Ex. J. The November 2015 evaluation recommended that Coach Kennedy not be
24 rehired because he allegedly “failed to follow district policy” regarding religious expression and
25 allegedly “failed to supervise student-athletes after games.” *Id.*

26 69. In January 2016, Coach Kennedy’s contract was not renewed.

27 70. Although BSD attributed its adverse employment actions to Coach Kennedy’s
28 alleged failure to follow district policy and supervise players, the District’s own correspondence

1 makes clear that it acted on the basis of Coach Kennedy’s religious expression. *See* BSD
2 Statement and Q&A, Oct. 28, 2015, Ex. G, at 1 (“This action was necessitated” because Coach
3 Kennedy failed to “refrain from engaging in overt, public religious displays on the football field
4 while on duty as a coach”); Letter to Coach Kennedy, Oct. 28, 2015, Ex. F (Coach Kennedy
5 “engag[ed] in overt, public and demonstrative religious conduct while still on duty as an assistant
6 football coach”).

7 71. Upon information and belief, although Coach Boynton has continued to engage in
8 private religious expression at the conclusion of BHS football games, BSD did not give poor
9 performance evaluations to Coach Boynton or otherwise retaliate against him based on his
10 religious expression.

11 **G. Coach Kennedy Files a Charge of Religious Discrimination with the EEOC**

12 72. Coach Kennedy promptly filed a complaint of religious discrimination with the
13 Equal Employment Opportunity Commission (EEOC) on December 15, 2015. He filed a
14 discrimination charge on January 30, 2016.

15 73. The U.S. Department of Justice issued a right-to-sue letter on June 27, 2016.
16 Letter to Mr. Joseph Kennedy, June 27, 2016, Ex. K.

17 **VI. CAUSES OF ACTION**

18 **COUNT I – VIOLATION OF FIRST AMENDMENT RIGHT TO FREE SPEECH**

19 74. Coach Kennedy hereby incorporates and adopts by reference each and every
20 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

21 75. Pursuant to 42 U.S.C. § 1983, Coach Kennedy brings this claim against BSD for
22 acting under color of state law to deprive him of rights secured by the U.S. Constitution.

23 76. Coach Kennedy’s private religious expression is fully protected under the First
24 Amendment, which prohibits the government from “abridging the freedom of speech.” This
25 prohibition applies to state and local governments through the Fourteenth Amendment.

26 77. By BSD’s own admission, Coach Kennedy’s protected religious expression was a
27 driving factor in its decision to take adverse employment action against Coach Kennedy.

1 78. BSD's ban on any demonstrative religious expression by Coach Kennedy violates
2 the First Amendment, as does its decision to take adverse employment action against him
3 because of such expression.

4 79. BSD has engaged in unconstitutional viewpoint discrimination against Coach
5 Kennedy.

6 **COUNT II – VIOLATION OF THE FIRST AMENDMENT RIGHT TO FREE EXERCISE**

7 80. Coach Kennedy hereby incorporates and adopts by reference each and every
8 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

9 81. Pursuant to 42 U.S.C. § 1983, Coach Kennedy brings this claim against BSD for
10 acting under color of state law to deprive him of rights secured by the U.S. Constitution.

11 82. The First Amendment likewise guarantees Coach Kennedy's right to freely
12 exercise his religion.

13 83. BSD's blanket ban on any demonstrative religious expression by Coach Kennedy
14 violates the First Amendment, as does its decision to take adverse employment action against
15 him because of such expression.

16 **COUNT III – DISPARATE TREATMENT UNDER TITLE VII**
17 **OF THE CIVIL RIGHTS ACT OF 1964**

18 84. Coach Kennedy hereby incorporates and adopts by reference each and every
19 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

20 85. BSD's decision to enforce its apparent policy banning all private, demonstrative
21 religious expression by employees on duty against only Coach Kennedy—and not other similarly
22 situated employees who also engaged in private, demonstrative religious expression—constitutes
23 disparate treatment under the Title VII of the Civil Rights Act of 1964.

24 86. BSD directly discriminated against Coach Kennedy on the basis of his religion.

25 87. Specifically, the District's conduct constitutes discrimination on the basis of
26 religion under 42 U.S.C. § 2000e-2(a).

1 88. Coach Kennedy is entitled to an injunction reinstating him as an assistant coach
2 for the BHS varsity football team and the head coach of the BHS junior varsity football team
3 under 42 U.S.C. § 2000e-5(g).

4 **COUNT IV – PROTECTED CHARACTERISTIC AS A MOTIVATING FACTOR UNDER TITLE VII**
5 **OF THE CIVIL RIGHTS ACT OF 1964**

6 89. Coach Kennedy hereby incorporates and adopts by reference each and every
7 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

8 90. Coach Kennedy's protected religious expression was a motivating factor behind
9 BSD's decision to take adverse employment action against Coach Kennedy.

10 91. Specifically, the District's conduct violates 42 U.S.C. § 2000e-2(m).

11 **COUNT V – FAILURE TO ACCOMMODATE UNDER TITLE VII**
12 **OF THE CIVIL RIGHTS ACT OF 1964**

13 92. Coach Kennedy hereby incorporates and adopts by reference each and every
14 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

15 93. BSD failed to offer Coach Kennedy a reasonable accommodation that would
16 allow him to exercise his sincerely held religious beliefs.

17 94. BSD's decision not to offer Coach Kennedy a reasonable accommodation to
18 practice his sincerely held religious beliefs violates Title VII of the Civil Rights Act of 1964.

19 95. Specifically, the District's conduct violates 42 U.S.C. § 2000e-2(a) and 42 U.S.C.
20 § 2000e-(j).

21 **COUNT VI – RETALIATION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

22 96. Coach Kennedy hereby incorporates and adopts by reference each and every
23 allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

24 97. BSD retaliated against Coach Kennedy as prohibited by Title VII of the Civil
25 Rights Act of 1964 when it took adverse employment action against him on the basis of his
26 opposition to a prohibited employment action: that is, discrimination against him based on his
27 religious beliefs.

28 98. Specifically, the District's conduct violates 42 U.S.C. § 2000e-3(a).

COUNT VII – FAILURE TO RE-HIRE UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

99. Coach Kennedy hereby incorporates and adopts by reference each and every allegation in the preceding paragraphs of this Complaint as if fully set forth herein.

100. BSD discriminated against Coach Kennedy as prohibited by Title VII of the Civil Rights Act of 1964 when it failed to re-hire him on the basis of his religious beliefs.

101. Specifically, the District’s conduct violates 42 U.S.C. § 2000e-2(a)(1).

VII. REQUEST FOR ATTORNEYS’ FEES AND COSTS

102. Coach Kennedy is entitled to recover reasonable attorneys’ fees and costs under 42 U.S.C. § 1988(b), in an amount to be proven at trial.

103. Coach Kennedy is likewise entitled to attorneys’ fees and costs under 42 U.S.C. § 2000e-5(k), in an amount to be proven at trial.

VIII. JURY TRIAL DEMAND

104. Coach Kennedy requests a jury trial on all issues that may be tried to a jury.

PRAYER FOR RELIEF

Coach Kennedy prays that this Court enter Judgment:

1. Declaring that BSD’s discrimination against Coach Kennedy on the basis of his religious expression violates Coach Kennedy’s freedom of speech as protected by the First Amendment;
2. Declaring that BSD’s discrimination against Coach Kennedy on the basis of his religious expression violates Coach Kennedy’s right to free exercise as protected by the First Amendment;
3. Declaring that BSD’s actions violate Title VII of the Civil Rights Act of 1964;
4. Ordering BSD to reinstate Coach Kennedy to his previous positions as assistant coach of the BHS varsity football team and head coach of the BHS junior varsity football team;
5. Ordering BSD to provide Coach Kennedy with a religious accommodation that affirms his right to offer a brief, quiet prayer at the 50-yard line at the conclusion of BHS football games;

- 1 6. Awarding Coach Kennedy attorneys' fees and costs;
- 2 7. Awarding Coach Kennedy pre- and post-judgment interest; and
- 3 8. Awarding Coach Kennedy all other appropriate relief as the Court deems just and
- 4 proper.

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1 Dated: August 9, 2016

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Respectfully submitted,

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27 * *Pro hac vice* application pending.

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2016, the foregoing document was served via electronic filing on all counsel of record in this case.

/s/ Jeffrey Paul Helsdon
Counsel for Plaintiff