
Dear Ruth:

Again, I must thank you for your second thoughtful and helpful letter. You are dead right that we should not make light of the strong feelings that our holding will engender. Footnote 19 will therefore be deposited in the ashcan.

With respect to the question whether the fact that the stated purpose of the policy is “to solemnize the event” suggests an intent to encourage prayer, I still think there is a distinction between the custom of having a solemn element in a pregame ceremony and the rather unique proposition that the athletic event itself is supposed to be solemn. Would you have the same adverse reaction to this rewrite of that portion of the opinion?

According to the District, the secular purposes of the policy are to “fost[e]r free expression of private persons . . . as well [as to] solemniz[e] sporting events, promot[e] good sportsmanship and student safety, and establis[h] an appropriate environment for competition.” Brief for Petitioner 14. We note, however, that the District’s approval of only one specific kind of message, an “invocation,” is not necessary to further any of these purposes. Additionally, the fact that only one student is permitted to give a content-limited message suggests that this policy does little to “fost[e] free expression.” Also questionable is the goal of “solemnizing sporting events.” While sporting events often include a brief ceremony at the start of the game—usually marked by a performance of the national anthem—solemnity is not a typical or even desired characteristic of the entire sporting event. On the contrary, the crowd and the atmosphere are preferably energetic and animated. This is in contrast to other societal gatherings that often begin with a dignified moment as an attempt to solemnize the audience throughout the entire occasion such as graduation ceremonies, weddings, court proceedings, or sessions of legislature.

Most striking to us, however, is the evolution of the current policy from the long-sanctioned office of “Student Chaplain” to the candidly titled “Prayer at Football Games” regulation. This history indicates that the District intended to
preserve the practice of prayer before football games. The conclusion that the District viewed the October policy simply as a continuation of the previous policies is dramatically illustrated by the fact that the school did not conduct a new election, pursuant to the current policy, to replace the results of the previous election, which occurred under the former policy. Given these observations, and in light of the school’s history of regular delivery of a student-led prayer at athletic events, it is reasonable to infer that the specific purpose of the policy was to preserve a popular “state-sponsored religious practice.” *Lee*, 505 U. S., at 596.

Respectfully,

[Signature]

Justice Ginsburg