

1 Kevin T. Snider, State Bar No. 170988
2 Matthew B. McReynolds, State Bar No. 234797
3 PACIFIC JUSTICE INSTITUTE
4 P.O. Box 276600
5 Sacramento, CA 95827
6 Tel. (916) 857-6900
7 Fax (916) 857-6902

8 Michael J. Peffer, State Bar No. 192265
9 *Counsel for Service*
10 P.O. Box 11630
11 Santa Ana, CA 92711
12 Phone: (714) 796-7150
13 Fax: (714) 796-7182
14 Email: michaelpeffer@pji.org

15 *Attorney for Defendants*

16 UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA
18 EASTERN DIVISION

19 FREEDOM FROM RELIGION)
20 FOUNDATION, INC., ET AL.,)
21)
22 Plaintiffs,)
23 vs.)
24 CHINO VALLEY UNIFIED)
25 SCHOOL DISTRICT BOARD OF)
26 EDUCATION, ETC. ET AL,)
27 Defendants)

Case No.: 5:14-CV-02336 JGB(DTBx)

**DEFENDANTS' NOTICE OF MOTION FOR
SUMMARY JUDGMENT;
DEFENDANTS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT
(FRCP 56)**

Date: October 26, 2015
Time: 9:00 a.m.
Ctrm: 1
Hon.: Jesus G. Bernal

**(Filed Concurrently with Motion for Leave to
File Late Motion for Summary Judgment)**

NOTICE OF MOTION

TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 26, 2015, at 9:00 a.m., or as soon thereafter as this matter can be heard in Courtroom 1 of this Court, located at 450 Golden Gate Ave., San Francisco, CA, 94102, Defendants THE CHINO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION, AND CHINO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION BOARD MEMBERS JAMES NA, SYLVIA OROZCO, CHARLES DICKIE, AND IRENE HERNANDEZ-BLAIR IN THEIR OFFICIAL REPRESENTATIVE CAPACITIES (COLLECTIVELY REFERRED TO AS THE “BOARD”), by and through their counsel, move for an order granting summary judgment.

This motion, filed pursuant to Federal Rule of Civil Procedure 56, is based on this Notice of Motion; Defendant’s Memorandum of Points and Authorities in Support of this Motion, set forth below; the Declarations of Michael J. Peffer, and Pat Kaylor, filed herewith; the Exhibits filed herewith; and all the papers, records, exhibits and documents on file herein, and evidence, oral and documentary, which has, or may be submitted on the hearing on these matters.

The relief sought is summary judgment as to the causes of action in the First Amended Complaint filed December 15, 2014.

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PACIFIC JUSTICE INSTITUTE

/S/ Michael J. Peffer
Kevin T. Snider
Matthew B. McReynolds
Michael J. Peffer
Attorneys for Defendants

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MEMORANDUM OF POINTS AND AUTHORITIES

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ISSUES PRESENTED FOR SUMMARY JUDGMENT

Is the District’s practice of allowing an invocation prior to school board meetings allowed by the holding of *Town of Greece*?

Do school board meetings for the District qualify for the legislative exception, announced by *Marsh*, and upheld by *Town of Greece*.

Is Plaintiffs’ request for injunctive relief in the context of speech by School Board members a prior restraint on protected or at least potentially protected speech?

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SUMMARY OF THE FACTS AND ARGUMENT

As written, the Board’s Resolution of allowing prayer-givers to pray according to their own conscience avoids violating the First Amendment for several reasons. First, the government abridges free speech by engaging in viewpoint discrimination when it directs a private speaker how to pray in a limited public forum. Second, such government action also would constitute impermissible government speech on a religious viewpoint, thereby violating the Establishment Clause as discussed in *Lee v. Weisman*, 505 U.S. 577, 588 (1992), and *Santa Fe Ind. Sch. Dist. v. Doe*, 530 U.S. 290 (2000). Third, *Town of Greece v. Galloway*, 134 S.Ct. 1811, 1818-24 (2014), sets the standard for the intended effect, not the religious viewpoint, of legislative prayer.

As already noted by the Court, the Board’s practice of allowing an invocation to solemnize its meetings is constitutional because the Board is a deliberative and legislative body, which, under *Town of Greece*, may solemnize its meetings with prayer. The Board’s governance over the school system does not render its prayers unconstitutional because this affiliation is not the kind that would lead to indoctrination or coercion.

Since there are no material disputes of fact— *Town of Greece* —resolution of this case via summary judgment is appropriate.

1 **LEGAL ARGUMENT**

2 ***I. Standard of Review***

3 A motion for summary judgment is proper when “the pleadings, depositions,
4 answers to interrogatories, and admissions on file, together with the affidavits, if
5 any, show that there is no genuine issue as to any material fact and that the moving
6 party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The court
7 must determine whether there are any genuine issues of material fact under the
8 relevant substantive law. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001).
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12 **II. Plaintiffs Seek Injunctive Relief Which Puts the Court in the Place of**
13 **Supervising the Content of Speech Before its Utterance.**

14 An injunction is overbroad when it seeks to restrain the defendants from
15 engaging in legal conduct, or from engaging in illegal conduct that was not fairly the
16 subject of litigation. See, *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 504
17 (7th Cir.2008) (noting that an injunction is overbroad if it results in a “likelihood of
18 unwarranted contempt proceedings for acts unlike or unrelated to those originally
19 judged unlawful” [internal quotation marks omitted]); *e360 Insight v. The Spamhaus*
20 *Project*, 500 F.3d 594, 604 (7th Cir. 2007) (vacating injunction that “failed to
21 comply with the rule requiring courts to tailor injunctive relief to the scope of the
22 violation found” (internal quotation marks omitted)).

23 Orders which restrict or preclude a citizen from speaking in advance, “prior
24 restraints,” are disfavored and presumptively invalid (*Hurvitz v. Hoefflin*, 84
25 Cal.App.4th 1232, 1241 (2000)).
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1 An injunction is overbroad if it purports to restrain the speech of parties who
2 were not before the court, or to prohibit private religious speech (*Doe v. Small*, 964
3 F.2d 611, 621 (1992); *Chandler v. Seigelman*, 230 F.3d 1313, 1316 (2000). It is well
4 established that private religious speech is protected under the Free Speech Clause
5 of the First Amendment.
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8 See also, *C.F. v. Capistrano Unified School District*, 647 F.Supp.2d 1187
9 (C.D. Ca 2009) where the District Court found a proposed injunction overbroad
10 where it requested to enjoin a public employee to refrain from expressing any
11 disapproval of religion while acting in his official capacity as a public school
12 employee. The District Court there noted, “the Establishment Clause is not a
13 blanket prohibition on making any disapproving or hostile statements.” (*Id.*).
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16 Plaintiffs seek declaratory judgment that “Defendants’ conduct of prayers,
17 Bible readings, and proselytizing at Board meetings” violate Plaintiffs’ rights
18 protected by the First and Fourteenth Amendments to the United States
19 Constitution; Article I, section 4 and Article XVI, section 5 of the California
20 Constitution
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23 Furthermore, they seek declaratory judgment that “the customs and practices
24 of the District which promote, endorse and establish religious activities, prayer and
25 instruction” in District schools violates those same provisions of the United States
26 Constitution and California Constitution;
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1 Finally, they seek permanent injunction enjoining “Defendants their agents,
2 employees and successors in office from conducting or permitting any school-
3 sponsored religious exercises or prayer, including proselytizing, preaching, Bible-
4 readings, or otherwise using their secular offices to promote their personal religious
5 beliefs as part of any Board meeting.”

7 All of this relief requires the court to judge speech which has already been
8 spoken, to predict how other speech might fit within the parameters of past speech,
9 and then stop any future speech which might resemble the past speech, before any
10 such speech has been uttered. This is classic prior restraint. Thus, this Court should
11 find this case to be nonjusticiable, given that it is impossible to frame an injunction
12 that predicts and limits future speech.

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16 **III. The District’s Board Meetings are Deliberative Bodies and Qualify under**
17 **Town of Greece for Legislative Exception.**

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19 At the heart of this case lies the question whether a school board meeting is
20 more like a city council meeting, or more like a school graduation or school sporting
21 event. While the controlling precedent does not definitively answer the question, it
22 provides enough clues. The District submits that these clues lead inexorably toward
23 the conclusion that its board meetings should be treated much the same as other
24 deliberative local bodies. Perhaps most obviously, the board convenes and conducts
25 its meetings in much the same fashion as a city council. Plaintiffs would no doubt
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1 point out that the school board includes a student representative, and students are
2 more likely to be present at board meetings than a city council. But the gravamen of
3 this argument was rejected by the Supreme Court in *Town of Greece*, 134 S. Ct. at
4 1825. There, the plaintiffs similarly saw coercion in the fact that some members of
5 the community (even children) attend the city council meetings with little choice if
6 they wanted to obtain services such as the issuance of permits, or be recognized for
7 achievement. *Id.* at 1827, 1831. The Supreme Court was unsympathetic to this
8 coercion argument. *Id.*

11 At the same time, analogies the plaintiffs must make to other activities like
12 school graduations are unpersuasive. Most fundamentally, the routine business of a
13 school board is hardly the momentous occasion courts have deemed to hold such
14 strong cultural significance that students have little real choice whether to attend.
15 See, e.g., *Lee v. Weisman*, 505 U.S. 577 (1992); *Cole v. Oroville Union High Sch.*
16 *Dist.*, 228 F.3d 1092 (9th Cir. 2000); *Lassonde v. Pleasanton Unified Sch. Dist.*, 320
17 F.3d 979 (9th Cir. 2003). And while the rough-and-tumble of local politics may at
18 times resemble a contact sport like football, one strains to logically equate the social
19 phenomenon that is high school football with a school board meeting.
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24 Another key distinction between school board meetings and graduations or
25 football games is the degree to which speech by students or school staff may be
26 controlled. For instance, the Ninth Circuit has held that student speakers at
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1 graduation may be censored in order to avoid perceived Establishment Clause
2 problems. *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d at 1101; *Lassonde v.*
3 *Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 983 (9th Cir. 2003). But the same
4 student could not be so censored when making a public comment at a school board
5 meeting, as the latter forum is inherently more open to a variety of expression and
6 eschews censorship. A similar distinction lies with sporting events. A student's or
7 staff member's participation at such events necessarily subjects him or her to school
8 discipline, even for speech that would be otherwise permissible. See also, *Morse v.*
9 *Frederick*, 551 U.S. 393, 396 (2007) (upholding discipline of student for
10 provocative banner at Olympic torch relay adjacent to school). Likewise, the speech
11 of teachers is circumscribed during contract time and official school functions.
12 *Pelosa v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 522 (9th Cir. 1994). But
13 teachers may not be so limited when communicating to the school board or the
14 general public on matters of public concern about which that body is deliberating.
15 *Pickering v. Bd. of Ed. of Tp. High Sch. Dist. 205, Will County, Illinois*, 391 U.S.
16 563, 573 (1968).

22 For all of these reasons, a school board meeting is less like other school
23 events and more like a meeting of other local governmental bodies.
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1 ***A. The School Board Invocations Do Not Implicate the Protections***
2 ***Afforded to Students at a Graduation Ceremony.***

3 In *Town of Greece*, 134 S.Ct. at 1827, the Court distinguished *Lee v.*
4 *Weisman*, 505 U.S. 577 (1992) based on the fact that “[during a graduation] school
5 authorities maintained close supervision of the students and the substance of the
6 ceremony, a religious invocation was coercive as to an objecting student.” Like,
7 *Town of Greece* and *Marsh v. Chambers*, 463 U.S. 783 (1983), the District’s school
8 board meetings do not have the same issues. There will be no evidence that
9 members of the public are dissuaded from leaving the meeting room during the
10 prayer, arriving late, or even making a later protest.

11 ***B. The Historicity of Legislative Prayers Compels This Court to Find***
12 ***in Favor of the District.***

13 A review of the history of American government makes two things clear:

- 14 • Legislative prayer is part of the fabric of our society *Town of Greece*, at
15 1818); and
16 • The principal audience for such prayers is the lawmakers themselves
17 (*Id.*, at 1825).

18 “Marsh stands for the proposition that it is not necessary to define the precise
19 boundary of the Establishment Clause where history shows that the specific practice
20 is permitted.” *Id.*, at 1819. The history of the practice of the legislative prayers is
21 well documented in *Marsh* and *Town of Greece*. Indeed, we are a religious people
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1 whose institutions presuppose a Supreme Being. *Zorach v. Clauson*, 343 U.S. 306,
2 313 (1952).

3 Moreover, the presence of children did not dampen the High Court’s support
4 for legislative prayer. *Town of Greece*, 134 S.Ct. at 1831-1832. Parents of children
5 can hold their children back from entering until after the prayer is given, or allow
6 them to leave when the prayer begins.
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9 *Town of Greece* points out that prayers by clergy also provide a way for the
10 legislative body to acknowledge “the central place that religion, and religious
11 institutions, hold in the lives of those present.” *Id.*, at 1827.
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13 **C. School Boards Are Legislative Bodies Under California Law**

14 Under California’s Brown Act (Government Code §54950), school boards
15 are considered to be legislative bodies. *Fischer v. Los Angeles Unified School*
16 *District* (1999) 70 Cal.App.4th 87, 95.
17

18 Like other legislative bodies, school boards of school districts are covered
19 under the legislative assumption announced by *Marsh*, and later clarified by *Town of*
20 *Greece*. Consequently, the invocation resolution of the District is a valid way of
21 adding solemnity to the occasion of the meetings, and impressing upon the board
22 members of the importance of their actions, in the long-standing tradition of the
23 United States.
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CONCLUSION

The material facts are not in dispute. The board members of the Chino Valley Unified School District have created the invocation time to add to the solemnity of the occasion and to focus their minds on the seriousness of the matters before them. Thus, this court should deny Plaintiffs’ request to enjoin the speech of the District’s Board Members, and grant Defendants’ Motion for Summary Judgment as to all causes of action.

Respectfully submitted:

October 1, 2015

Respectfully submitted,

PACIFIC JUSTICE INSTITUTE

/S/ Michael J. Peffer
Kevin T. Snider
Matthew B. McReynolds
Michael J. Peffer
Attorneys for Defendants