

LIBERTY COUNSEL



Post Office Box 540774
Orlando, FL 32854-0774
Telephone: 407•671•1776
Facsimile: 407•875•0770
www.LC.org

122 C Street N.W., Suite 360
Washington, DC 20001
Telephone: 202•289•1776
Facsimile: 202•737•1776

Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 407•875•1776
Facsimile: 407•875•0770
liberty@LC.org

Reply to: Florida

May 6, 2016

Via Email Only

Dr. Nikolai P. Vitti, Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207
vittin@duvalschools.org

Re: Offer of assistance regarding prayer at school board meetings

Dear Superintendent Vitti:

By way of brief introduction, Liberty Counsel is an international non-profit legal, media and policy organization specializing in First Amendment issues, headquartered in Orlando, Florida, with offices in Virginia and the District of Columbia. We routinely represent individuals, groups, and government bodies in matters involving public expressions of faith. Our practice is primarily federal, and we have had great success in representing our clients' interests.

Liberty Counsel is aware that the Freedom From Religion Foundation ("FFRF") has recently contacted Duval County Public Schools ("the District") and the School Board ("Board"), demanding that pre-Board meeting invocations cease. Liberty Counsel generally disagrees with the overreaching positions of FFRF, and would welcome the opportunity to speak with you about this matter.

In 2014, the U.S. Supreme Court once again confirmed the constitutionality of prayers given before legislative bodies. See *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); see also *Marsh v. Chambers*, 463 U.S. 783 (1983). FFRF's main stock in trade (sending threatening letters to legislative and deliberative bodies over pre-meeting prayer) being thus limited, FFRF still seeks to intimidate Florida school boards, claiming that *Town of Greece* is limited in impact, and citing federal 3rd Circuit and other distant jurisdictions' cases, in support of its claim that school boards are not legislative bodies, and that school board invocations are illegal, as set forth in its letter of May 3, 2016.

However, Florida is within the jurisdiction of the federal 11th Circuit Court of Appeals, and Florida school districts are not bound by 3rd Circuit opinions (especially those which pre-

date *Town of Greece*) which do not take into account the realities of Florida law. As you may be aware, the 11th Circuit ruled in favor of Duval County Schools in a case where Liberty Counsel defended the Duval Schools policy allowing student graduation messages, including prayer by the valedictorian, without regard to the religious content of the message, or religious viewpoint of the speaker. See *Adler v. Duval County School Board*, 851 F. Supp. 446 (M.D. Fla 1994), *aff'd in part and vacated in part*, 112 F.3d 1475 (11th Cir. 1997), *reh'g denied*, 120 F.3d 276 (11th Cir. 1997).

In a word, the FFRF is incorrect. In the 11th Circuit, there is no controlling precedent holding that prayer before school board meetings is illegal, and FFRF fails to cite *any* case so holding since *Town of Greece*. FFRF's claims notwithstanding, Florida law, and the history of Florida school boards, shows that in Florida, school boards fit **squarely** within the category of legislative bodies, notwithstanding their governance of the public schools. In the 11th Circuit, therefore, there is no reason to view such invocations as constitutionally suspect, especially in the wake of *Town of Greece*.

In addition to citing classroom or athletic event prayer cases which are distinguishable from school board prayer, FFRF willfully misrepresents the history of public invocations and public schooling in America. As the Supreme Court observed in *Zorach v. Clauson*, 343 U.S. 306 (1952) “[w]e are a religious people **whose institutions presuppose a Supreme Being.**” *Id.* at 313-14; and in *Holy Trinity Church v. United States*, 143 U.S. 457 (1892), the American people have long followed a “custom of opening sessions of **all deliberative bodies** and most conventions with prayer,” *Id.* at 47. (Emphasis added).

Moreover, contrary to FFRF's claims, public schools, and legislative bodies for their governance, have pre-dated the founding of America. In 1647, for instance, in the first law establishing public education in America, the General Court of the Massachusetts Bay Colony required towns to maintain a system of public schools, with every town of 50 families having an elementary school; and every town of 100 families having a grammar school, to ensure that children learned to read the Bible and become good citizens. By 1780, a system of public schools had been in existence for over 130 years in Massachusetts, a college had been in existence for over 140 years, and the values of public education had been expressed and supported in a wide variety of ways. “[P]ublic education was **integral to the republican form of government newly adopted in the Commonwealth**” and was “**a matter of State-wide responsibility.**” *McDuffy v. Sec'y of Executive Office of Educ.*, 615 N.E.2d 516, 533, 538 (1993). (Emphasis added).

In 1793, Governor John Hancock requested the Massachusetts Legislature to turn its attention to the entire system of public schools in the Commonwealth: “Amongst the means by which our government has been raised to its present height of prosperity, that of education has been the most efficient; you will therefore encourage and support our Colleges and Academies, but more watchfully the Grammar and other town schools.” *McDuffy* at 538. At the time, therefore, the Massachusetts legislature was directly responsible for public education (a “super School Board,” as it were), and it opened its meetings with prayer.

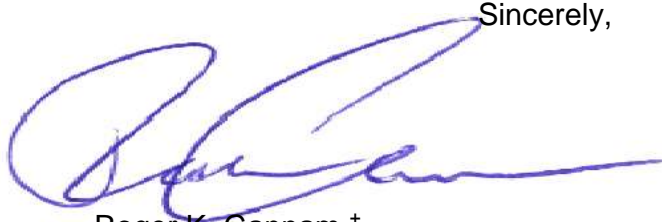
Thus, the claim in FFRF's May 3, 2016 letter, that “while Congress and state legislatures existed when the First Amendment was ratified, the public school system did not” is patently false, as is its claim that *Town of Greece* has “no applicability to the constitutionality of prayers at public school board meetings.”

This is not surprising, however, because the FFRF is not known for being an objective or reliable source when it comes to the law regarding our Nation's religious history, or on religious expression in the public sphere. It pushes a radical separationist stance unsupported by the law, and files lawsuits that are routinely rejected by the courts. Other atheists have written about the FFRF and its win/loss ratio [here at this link](#)^{*}: as of 2013, "Westlaw, a website that tracks court decisions, shows twenty-seven cases where FFRF has gone to court as a party and gotten a final disposition. They have won six. This 22% win percentage makes FFRF the least successful secular organization in the courts. They also happen to be the most litigious."

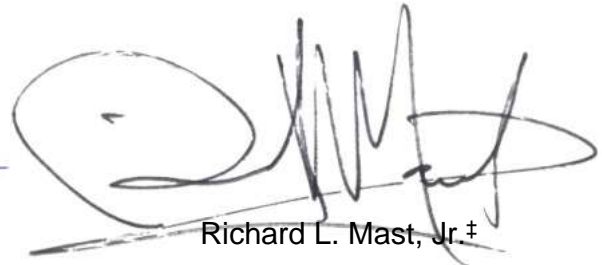
Therefore, we are available to discuss this matter, and how Liberty Counsel may be of assistance in developing (and defending) a board prayer policy that will pass constitutional muster. If the Duval County Schools adopts or continues a strategy and practice consistent with Liberty Counsel's advice, and an agreement for representation is reached, Liberty Counsel would defend Duval County Schools on a pro bono basis, at no charge to the school system, in the event that FFRF were to bring suit.

If you wish clarification on this offer or would like to further discuss Liberty Counsel's experience in these matters, please do not hesitate to contact us by calling toll free at 1-800-671-1776.

Sincerely,



Roger K. Gannam.[†]



Richard L. Mast, Jr.[‡]

RLM/ajr
CC

Via Email

Duval County School Board
Ashley Smith Juarez
Becki Couch
Cheryl Grymes
Connie Hall
Jason Fischer
Paula D. Wright
Scott Shine

juareza1@duvalschools.org
couchr@duvalschools.org
grymesc@duvalschools.org
hallc6@duvalschools.org
fischerj@duvalschools.org
wrightp@duvalschools.org
shinef@duvalschools.org

^{*} <https://www.unifreethought.com/blog/suing-ourselves-in-the-foot/>

[†] Licensed in Florida

[‡] Licensed in Virginia