

Date: October 5, 2018  
To: District Superintendent  
From: FFRF Attorney Chris Line  
Re: Memorandum on Illegality of School-sponsored Prayers

We are writing to outline the current state of the law regarding school-sponsored prayer in public schools. The Freedom From Religion Foundation (FFRF) is a nationwide nonprofit organization, which works protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism. FFRF has more than 32,000 members across the country including members in Alabama.

Recently, you received a memorandum from Roy Moore and The Foundation for Moral Law that encouraged your school district to risk legal and financial liability by broadcasting prayer over the loudspeaker before football games in defiance of well-established Supreme Court precedent. We'd like to correct the misinformation and erroneous analysis contained in Moore's memorandum to ensure that your school district is following the law and protecting the constitutional rights of its students.

As you are aware, your school district community is comprised of not only Christians, but also minority religious and nonreligious students and families. Every community member should be able to attend district football games and root for their team without feeling unwelcome, proselytized, or alienated because the district chooses to promote and endorse religious messages at the game. Today nearly a quarter of adults in the U.S. are nonreligious and an additional 6 percent are non-Christian, and those numbers are rising.<sup>1</sup> Among millennials and younger Americans—those born after 1981, i.e., your students—over 38 percent are nonreligious and an additional 9 percent practice a minority religion.<sup>2</sup>

### **Broadcasting prayer over the loudspeaker before public school events is unconstitutional**

It is unlawful for a public school to sponsor religious messages at school events, including athletic events. The Supreme Court has continually struck down school-sponsored prayer in public schools. *See, e.g., Lee v. Weisman*, 505 U.S. 577 (1992) (ruling prayers at public school graduations an impermissible establishment of religion); *Wallace v. Jaffree*, 472 U.S. 38 (1985) (overturning law requiring daily “period of silence not to exceed one minute . . . for meditation or daily prayer.”); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963) (declaring unconstitutional devotional Bible reading and recitation of the Lord's Prayer in public schools); *Engel v. Vitale*, 370 U.S. 421 (1962) (finding prayers in public schools unconstitutional).

More specifically, the Supreme Court has struck down prayers or invocations over the loudspeaker at public school athletic events, even when student-led. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, (2000) (striking down a school policy that authorized students to vote on whether to have a prayer at high school football games). The Court reasoned that because the football game was a school-sponsored event, hosting prayer was a constitutional violation. *Id.* at 307. Even if student-led, the Court said prayers at a

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<sup>1</sup> Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, Public Religion Research Institute (Sept. 6, 2017), available at [www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf](http://www.prrri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).

<sup>2</sup> *Id.*

“regularly scheduled school-sponsored function conducted on school property” would lead an objective observer to perceive it as state endorsement of religion. *Id.* at 308.

### **Schemes to encourage student prayers over the loudspeaker are also unconstitutional**

Moore erroneously claims that the Eleventh Circuit Court of Appeals rulings in *Adler v. Duval Cty. Sch. Bd.* and *Chandler v. Siegelman* permit school districts to set up a scheme for broadcasting prayer before football games. Neither of these cases support that conclusion. These cases discussed student speech rights, not situations in which public school districts have been and continue to actively encourage and endorse prayer before high school football games.

In *Adler*, the Eleventh Circuit Court of Appeals held that a school could allow students to deliver unvetted, unedited, unrestricted messages — which could be about anything, including religion — at the graduation ceremony. *Adler v. Duval Cty. Sch. Bd.*, 250 F.3d 1330 (11th Cir. 2001). The court would not have permitted those open messages if the “policy was found to be nothing more than the product of repeated efforts by the school district to inject prayer and other religious activities into school events...” *Id.* at 1340. Moore’s “advice” to adopt such a policy to promote religion expressly flouts *Adler*.

In *Chandler*, the Eleventh Circuit reiterated that school districts are prohibited “from taking affirmative steps to create a vehicle for prayer to be delivered at a school function.” *Chandler v. Siegelman*, 230 F.3d 1313, 1315 (11th Cir. 2000). Yet that is exactly what Moore is suggesting that your school district should do. By telling school districts that they can host pre-game prayers over the loudspeaker, Moore is deliberately distorting *Chandler’s* holding that “[s]o long as the prayer is *genuinely student-initiated*, and not the product of any school policy which actively or surreptitiously encourages it, the speech is private and it is protected.” *Id.* at 1317.

### **Conclusion**

Moore’s push to promote the infliction of prayer upon captive audiences of students violates the strictures laid out in *Santa Fe*, *Adler*, and *Chandler*. Any school district that adopts this course of action would be violating this precedent and students’ constitutional rights, and laying itself open to legal liability.

There is no deprivation of anyone’s constitutional rights when a public school chooses to follow the law by not imposing prayer on attendees at school events. Keeping divisive religious ritual out of public schools protects the rights of all and ensures equality. Of course, students who wish to pray on their own are free to do so in a nondisruptive manner.

We urge you to ensure that your school district is continuing to follow the law by not scheduling prayer at school-sponsored events or using District equipment to project prayers to students, parents, and the public.

Thank you for your time and attention to this matter. We would be happy to respond to any questions at (608) 256-8900. We would also be willing to present a symposium or workshop on the law pertaining to religion in public schools for your staff members.