

FREEDOM FROM RELIGION *foundation*

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February 25, 2013

SENT VIA FAX & EMAIL

Mr. David Duff
Duff, White & Turner, LLC
PO Box 1486
Columbia, SC 29202

Re: Unconstitutional Pickens County School Board of Trustees Prayers

Dear Attorney Duff:

I am writing on behalf of the Freedom From Religion Foundation (“FFRF”) to renew FFRF’s objection to the unconstitutional prayers that open School District of Pickens County Board of Trustees meetings. We understand the Board may vote to continue with nonsectarian prayer at tonight’s meeting. We urge the Board to resolve this issue once and for all by removing prayer rather than to continue with prayers, which will remain a liability for the school system and a violation of the Establishment Clause.

As you and the Board are aware, courts of appeals that have addressed prayers by school boards have not found them to be permissible under *Marsh v. Chambers*, but instead have struck down the practices as being school prayer in violation of the Establishment Clause. *See Doe v. Indian River School District*, 653 F.3d 256 (3rd Cir. 2011); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999). In light of these cases, it is shameful for the Board to willfully continue with prayer in violation of the rights of conscience of Pickens County families.

First, the opinion issued by the Office of the Attorney General is misguided. As I previously expressed to you, the opinion mistakenly relies in part on a California district court preliminary injunction case that has no import here. In fact, the Ninth Circuit Court of Appeals ruled that the school district prayers were unconstitutional in that case. Ultimately, the Court said,

We need not determine whether prayers at school board meetings are more like prayers in state legislatures, as in *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), or more like prayers in schoolrooms, as *Coles v. Cleveland Board of Education*, 171 F.3d 369 (6th Cir.1999). *Bacus v. Palo Verde Unified Sch. Dist. Bd. of Educ.*, 52 F. App’x 355, 356 (9th Cir. 2002)(unpublished).

Second, a nonsectarian prayer policy will not cure the Establishment Clause violation here. The Board is intimately tied to public schools and as such may not endorse religion or religious rituals. The Board is integral on setting school policy and carrying out its duty to provide for public education. It is noteworthy that the Board takes on more than just legislative functions. Per Board Policy BBA, the Board has many functions including a quasi-judicial role. The Board is also

responsible for informing citizens about its schools. The Board has in the past regularly hosted students to lead the Pledge of Allegiance and to receive honors from the School District of Pickens County. The fact is that the Board is different than a municipal council, it is deeply involved in the education of students.

While the Board has heard from a number of County residents who support school prayer, it must not heed to a religious majority. Thankfully, under the U.S. Constitution, a majority of citizens can't use the government to institute their religion. This is a matter of constitutional law, not "majority rule." It is immaterial how many residents would like the Board to continue sectarian or nonsectarian prayers. The courts have continually reaffirmed that the rights of minorities and freedom of conscience are protected by the Constitution. As the Supreme Court has said, "fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 304-305 (2000) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943)). As the Court said in *Barnette*,

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. 319 U.S. at 638.

It would be unwise for the Board to adopt a prayer policy while pending litigation may soon address the constitutional issue involved. As you are aware, FFRF and several families have a current lawsuit pending against District Five of Lexington and Richland Counties concerning school prayer, including prayer by the District's Board of Trustees. A ruling on that issue certainly would provide guidance to Pickens County on the impropriety of Board prayers.

A nonsectarian prayer policy will not resolve the constitutional problem here. We urge the Board to follow the Constitution and to drop religious rituals from its official duties.

Sincerely,



Patrick Elliott
Staff Attorney