

FREEDOM FROM RELIGION *foundation*

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October 10, 2023

SENT VIA EMAIL & U.S. MAIL: boardmembersemail@nhcs.net

Pete Wildeboer
Board Chair
New Hanover County Board of Education
6410 Carolina Beach Road
Wilmington, NC 28412

Re: Unconstitutional School Board Prayers

Dear Chair Wildeboer and Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the Board's unconstitutional practice of opening its meetings with prayer. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 900 members and a local chapter in North Carolina. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

It is our understanding that at its October 3, 2023, the Board held a second reading of a policy governing official Board prayer before meetings. According to the Board's agenda, the meeting began with a prayer led by Joshua Reilly, Pastor of Long Leaf Baptist Church. It is our understanding the new policy would allow local religious leaders to open the Board's meeting with a prayer up to 3 minutes in length.

We ask that the Board reject this proposed policy and cease imposing prayer upon students, staff, and community members in order to comply with the Establishment Clause of the First Amendment and to respect the rights of every member of the community.

It is beyond the scope of a public school board to schedule or conduct prayer as part of its meetings, even if the prayer is delivered by local religious leaders. This practice violates the Establishment Clause of the First Amendment. *See FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), *petition for review en banc denied*, No. 16-55425 (9th Cir., Dec. 26, 2018); *Doe v. Indian River Sch. Dist.*, 653 F.3d 256 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1097; *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002); *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).

In *Indian River School District* the Third Circuit Court of Appeals emphasized that school board prayer is analogous to other school prayer cases when it comes to protecting children from the coercion of school-sponsored prayer, which is heightened in the context of public schools. 653 F.3d at 275. In that case, the court held that school board meetings are "an atmosphere that contains many of the same indicia of coercion and involuntariness that the Supreme Court has recognized elsewhere in its school prayer jurisprudence." *Id.* The court's "decision [was] premised on careful consideration of the role of students at school boards, the purpose of the school board, and the principles underlying the Supreme Court's school prayer case law." *Id.* at 281. The final conclusion was that the school board prayer policy "[rose] above the level of interaction between church and state that the Establishment Clause permits." *Id.* at 290.

A public school board is an essential part of the public school system. *See Coles*, 171 F.3d at 381 (“[T]he school board, unlike other public bodies, is an integral part of the public school system.”). Public school boards exist to set policies, procedures, and standards for education within a community. The issues discussed and decisions made at board meetings are wholly school-related, affecting the daily lives of district students and parents. The Sixth Circuit noted in *Coles*, “although meetings of the school board might be of a ‘different variety’ than other school-related activities, the fact remains that they are part of the same ‘class’ as those other activities in that they take place on school property and are inextricably intertwined with the public school system.” *Id.* at 377.

Federal courts have consistently found that school board prayer is not evaluated in the same way as legislative prayer. In the most recent case striking down a school board’s prayer practice, the Ninth Circuit Court of Appeals reaffirmed that Establishment Clause concerns are heightened in the context of public schools “because children and adolescents are just beginning to develop their own belief systems, and because they absorb the lessons of adults as to what beliefs are appropriate or right.” *Chino Valley*, 896 F.3d at 1137. The court reasoned that prayer at school board meetings “implicates the concerns with mimicry and coercive pressure that have led us to ‘be [] particularly vigilant in monitoring compliance with the Establishment Clause.’” *Id.* at 1146 (quoting *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987)). The Court reaffirmed in *Kennedy* that the schools cannot “‘make a religious observance compulsory.’” *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2429 (2022) (quoting *Zorach v. Clauson*, 343 U. S. 306, 314 (1952)).

Students and parents have the right—and often reason—to participate in school board meetings. It is coercive, insensitive, and intimidating to force nonreligious citizens to choose between making a public showing of their nonbelief by refusing to participate in the prayer or else display deference toward a religious sentiment in which they do not believe, but which their school board members clearly do. Board members are free to pray privately or to worship on their own time in their own way. However, the Board ought not to lend its power and prestige to religion or coerce attendees into participating in religious exercise. Including prayer at Board meetings needlessly excludes those who are among the 37 percent of Americans who are non-Christians,¹ including the 49 percent of Generation Z who are religiously unaffiliated.²

It is unconstitutional for the Board to host prayers at its meetings. The Board must reject this proposed policy and cease hosting prayer in order to protect the rights of students, their parents, and the local community to be free from religious coercion in their public schools.

Sincerely,



Christopher Line
Staff Attorney

¹ Gregory A. Smith, *About Three-in-Ten U.S. Adults Are Now Religiously Unaffiliated*, Pew Research Center (Dec. 14, 2021), www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/.

² 2022 Cooperative Election Study of 60,000 respondents, analyzed by Ryan P. Burge www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/.