

FREEDOM FROM RELIGION *foundation*

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Jason Rainer
President
Prosser School District Board of Directors
1500 Grant Ave.
Prosser, WA 99350

Re: Unconstitutional prayer at school board meetings

Dear President Rainer and Directors:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding the Board's recent proposal to start imposing prayer on students, parents, and community members at its meetings. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 1,700 members and a local chapter in Washington. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

A concerned Prosser School District student has reported that on January 24, 2024 during a Board of Directors meeting, the Board discussed whether to begin imposing prayer on students, parents, and community members to begin its meetings. Video of the meeting shows that Director Frank Vermulm suggested:¹

...maybe during our meetings we would open in prayer, like after the pledge. I'd be willing to lead it, and um, I just think there's a lot of things and issues that we as a school district, a community even, you know, we think we could use some divine intervention. So, just a thought. Like I said, I would be willing to lead it.

Another director chimed in that they "think that's a great idea." A third director chimed in that they would like to lead a prayer too and suggested that the Board should "rotate," a suggestion that would allow each member of the Board to promote their personal religious beliefs at school board meetings. Director Vermulm then noted that some pastors had told him they would like to come to the meeting and lead students and community members in prayer as well.

¹ <https://www.youtube.com/watch?v=kXYnbW3pKU8>

A student representative said that they don't think religion should be brought up in school board meetings and urged the Board not to start imposing prayer at its meetings. They noted that they were an atheist and that people from a variety of different religious backgrounds attend school board meetings and leading them in prayer would be disrespectful. Another student representative agreed. Director Vermulm then noted that he was a "man of faith" so he believes in "divine intervention." Another Director agreed with him. It was not clear whether the Board had decided to begin imposing prayer at its meetings.

We write to ensure that the Board will not begin its meetings with prayer out of respect for the First Amendment rights of and the diversity of Prosser School District students, parents, staff, and community members.

The Supreme Court has consistently struck down prayers offered at school-sponsored events. *See, e.g., Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (striking down school-sponsored prayers at football games); *Lee v. Weisman*, 505 U.S. 577 (1992) (finding prayers at public high 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 school-sponsored devotional Bible reading and recitation of the Lord's Prayer unconstitutional); *Engel v. Vitale*, 370 U.S. 421 (1962) (holding formal recitation of prayers in public schools unconstitutional). In each of these cases, the Supreme Court struck down school-sponsored prayer because it constitutes government favoritism towards religion, which violates the Establishment Clause of the First Amendment. The Court's decision in *Kennedy v. Bremerton School District* did not alter the law regarding these kinds of coercive prayer practices, nor did it overrule these previous decisions.

It is beyond the scope of a public school board to conduct, or allow others to conduct, prayer as part of its meetings. This practice violates the Establishment Clause of the First Amendment. *See Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999); *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); *Bacus v. Palo Verde Unified Sch. Dist.*, 52 Fed. Appx. 355 (9th Cir. 2002).

In the most recent case striking down a school board's prayer practice, the Ninth Circuit Court of Appeals, which has jurisdiction over Washington, 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." *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132, 1137 (9th Cir. 2018). 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)).

The Supreme Court’s decision in *Town of Greece v. Galloway*, permitting sectarian prayers at legislative meetings, like county board meetings or meetings of Congress, has no applicability to the constitutionality of prayers at public school board meetings. In *Chino Valley*, which was decided after *Town of Greece v. Galloway*, the court distinguished the Chino Valley School Board from the deliberative legislative bodies considered in *Marsh v. Chambers* and *Galloway* and held that the board’s prayer practice must be analyzed as a school prayer case. See *Marsh v. Chambers*, 463 U.S. 783 (1983). The court found that “the nature of the audience at the Chino Valley Board meetings, and the nature of its relationship with the governmental entity making policy, are very different from those within the Marsh-Greece legislative-prayer tradition.” 896 F.3d at 1147. The court reasoned that prayers at school board meetings are “not the sort of solemnizing and unifying prayer, directed at lawmakers themselves and conducted before an audience of mature adults free from coercive pressures to participate that the legislative-prayer tradition contemplates. Instead, these prayers typically take place before groups of schoolchildren whose attendance is not truly voluntary and whose relationship to school district officials, including the Board, is not one of full parity.” *Id.* at 1142 (internal citations omitted).

It is important to highlight that student representatives on the Board immediately objected to the proposed prayer practice. In *Chino Valley*, the court emphasized that even the Fifth Circuit’s *Am. Humanist Ass’n v. McCarty* decision, the only appellate court decision that has upheld prayer at school board meetings under some circumstances, “suggested that where a student is a board member, prayer at board meetings may present constitutional difficulties.” 896 F.3d at 1144. Here, not only are there student representatives at the Board’s meetings, but they have directly asked you not to impose prayer on them.

If the Board starts opening its meetings with prayer it will subject the District to unnecessary liability and potential financial strain. When FFRF secured a court order in the *Chino Valley* case regarding its school board prayers, the court ordered the district to pay more than \$200,000 in the plaintiffs’ attorney fees and costs. *Freedom From Religion Found. v. Chino Valley Unified Sch. Dist.*, No. 5:14-cv-02336-JGB-DTB (C.D. Cal. Feb. 18, 2016).² After appeal, the court ordered the district to pay an additional \$75,000 for plaintiffs’ attorney fees and costs associated with the appeal for a total of more than a quarter million dollars.

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, such as our complainant, 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. Needlessly including prayer at Board meetings excludes those who are among the 37 percent of Americans who are non-Christians,³ including the 49 percent of Generation Z who are religiously unaffiliated.⁴

² https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf

³ 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/.

⁴ 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/.

Out of respect for the First Amendment rights and diversity of its community, we ask that the Board refrain from instituting unconstitutional prayers at its meetings. Please inform us in writing of the steps the Board is taking to remedy this proposed constitutional violation so that we may inform our complainant. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Line", with a long horizontal flourish extending to the right.

Christopher Line
Staff Attorney
Freedom From Religion Foundation