

# FREEDOM FROM RELIGION *foundation*

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**SENT VIA EMAIL & U.S. MAIL: [mcross@rockingham.k12.va.us](mailto:mcross@rockingham.k12.va.us), [shorst@rockingham.k12.va.us](mailto:shorst@rockingham.k12.va.us), [jlhr@rockingham.k12.va.us](mailto:jlhr@rockingham.k12.va.us), [aburgoyne@rockingham.k12.va.us](mailto:aburgoyne@rockingham.k12.va.us), [hcave@rockingham.k12.va.us](mailto:hcave@rockingham.k12.va.us), [lfshifflett@rockingham.k12.va.us](mailto:lfshifflett@rockingham.k12.va.us), [kgilkeson@rockingham.k12.va.us](mailto:kgilkeson@rockingham.k12.va.us)**

Matthew Cross  
Board Chair  
Rockingham County School Board  
100 Mount Clinton Pike  
Harrisonburg, VA 22802

Re: Unconstitutional prayer at school board meetings

Dear Chair Cross and School Board members:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring at Rockingham County School Board meetings. FFRF is a national nonprofit organization with more than 40,000 members across the country, including more than 900 members in Virginia. Our purposes are to protect the constitutional principle of separation between state and church, and to educate the public on matters relating to nontheism.

Multiple concerned District parents have reported that the Board has held a moment of silence to begin its meetings for more than a decade, but that the newly elected board chair decided to change this practice and begin imposing prayer on students, parents, and community members. Our complainants report that the Board's January 8, 2024 meeting began with Chairman Cross explaining that he had unilaterally decided to resume beginning School Board meetings with prayer because "we need God's help":

Next, tonight is something new that is on our agenda here in Rockingham County. It once was on our agenda back in 2010, and as the Chairman of the Board, I have decided we will follow suit with our local officials...along with the United States Congress and open this governing body with an invocation. I believe the majority of our community would agree with me; we need God's help in the days we are living in, and so, tonight if you would join me in a moment of prayer. If you don't, that's okay as well, but I am going to say a prayer as we open up tonight.

Chair Cross then led attendees in prayer:

Heavenly Father, we need Your wisdom, Your discernment, understanding, and patience. Protect our children, our teachers and administrators, and staff while they are in our schools. May Your peace that goes beyond all understanding rest upon our schools.  
Amen.

We ask that the Board cease opening its meetings with prayer and return to a moment of silence out of respect for the First Amendment rights of and the diversity of Rockingham County Public Schools students, parents, staff, and community.

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.

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.” *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* 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).

In *Lund v. Rowan Cty., N. Carolina*, the Fourth Circuit Court of Appeals, which controls in Virginia, found that even legislative prayer is unconstitutional when the members of the legislative body are the only ones giving prayers because the government is delivering prayers that were exclusively prepared and controlled by the government, constituting a “much greater and more intimate government involvement” in the prayer practice than those that have been found constitutional. 863 F.3d 268, 278 (4th Cir. 2017).

Here, these government-delivered prayers are taking place in the public school context with its heightened Establishment Clause concerns, a violation of the Constitution.

If the Board continues 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).<sup>1</sup> 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 many complainants, 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,<sup>2</sup> including the 49 percent of Generation Z who are religiously unaffiliated.<sup>3</sup>

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

Sincerely,

A handwritten signature in blue ink that reads "Chris Line". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Line  
Staff Attorney  
Freedom From Religion Foundation

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<sup>1</sup> [https://ffrf.org/uploads/legal/FFRFvChinoValley\\_FeeOrder.pdf](https://ffrf.org/uploads/legal/FFRFvChinoValley_FeeOrder.pdf)

<sup>2</sup> 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/](http://www.pewforum.org/2021/12/14/about-three-in-ten-u-s-adults-are-now-religiously-unaffiliated/).

<sup>3</sup> 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/](http://www.religioninpublic.blog/2023/04/03/gen-z-and-religion-in-2022/).