

# FREEDOM FROM RELIGION *foundation*

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July 23, 2021

**SENT VIA EMAIL & U.S. MAIL:**  
**scott.hamilton@cantonlocal.org**

Scott Hamilton  
President, Board of Education  
Canton Local School District Administration  
600 Faircrest SE  
Canton, OH 44707

Re: Unconstitutional Prayer at School Board Meetings

Dear President Hamilton:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a serious constitutional violation occurring in the Canton Local School District. FFRF is a national nonprofit organization with 36,000 members across the country, including nearly 1,000 members in Ohio and a local chapter—the Northern Ohio Freethought Society. Our purposes are to protect the constitutional principle of separation between state and church and to educate the public on matters related to nontheism.

A concerned parent reported that the Canton Board of Education opens each board meeting with prayer, usually led by the Board President or another Board Member. The prayers frequently begin with “Dear god” or “Dear lord,” and end with “amen,” “in Jesus’ name,” or “in Christ’s name.” At times, the opening prayer directly quotes the Christian bible. For example, at the March 2021 board meeting, board member David Brothers recited the following scripture from the book of Proverbs: “Blessed are those who seek wisdom, they shall gain understanding.” You also direct the audience to stand in recognition of the prayer, an audience that often includes parents, students, and the general public.

At least one board member appears to protest the prayer practice by often remaining seated during the prayer and has even informed the rest of the board that the prayer practice is unconstitutional.<sup>1</sup> This member correctly noted that prayer practices like yours were declared unconstitutional in the Sixth Circuit’s decision in *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999). Because Ohio is within the Sixth Circuit, this decision is binding upon the Canton Local Schools Board. Continuing the prayer practice thus exposes the school district to legal liability.

It is beyond the scope of a public school board to schedule or 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); *Doe v. Indian River School District*, 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).

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<sup>1</sup> <https://www.youtube.com/watch?v=cS0XvZ4lTX0&t=16s> [7:30-15:07]

In the *Coles* decision, the Sixth Circuit noted that the Cleveland Board of Education had a practice very similar to Canton's that ran afoul of the Constitution. Like your meetings, the board in Cleveland began each meeting with prayer, had student representatives, regularly used board meetings to give special recognition to exceptional students, and generally served as a public forum for parents and students to voice their concerns. *Coles*, 171 F.3d. at 372-73.

The Sixth Circuit expressly found school board meetings are more akin to school prayer than legislative prayers, which are permitted under the Supreme Court's narrow decision in *Marsh v. Chambers*, 463 U.S. 783 (1983), see also *Coles*, 171 F.3d at 379-81. *Marsh* is not a rubber-stamp that makes "government sponsored prayer at all 'deliberative public bodies' . . . presumptively valid." *Coles*, 171 F.3d at 381. Rather, school board prayer more closely resembles the long line of Supreme Court cases which have held school prayer unconstitutional, for a variety of reasons:

- Meetings are conducted on school property;
- School officials conduct the meetings;
- School-related issues are the focal point of discussion at meetings;
- Students have an incentive to attend meetings since they cannot voice their opinion through the normal electoral process;
- Students have an incentive to attend meetings since the subject-matter of board meetings directly affects them;
- Students challenging disciplinary action must appear before the board;
- Students are often invited to attend to receive honors or awards; and
- Students often interact with the board.

See *Coles*, 171 F.3d 369.

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 a government advancement and endorsement of religion, which violates the Establishment Clause of the First Amendment.

It is important to note that the U.S. Supreme Court's decision in *Town of Greece v. Galloway*, permitting sectarian prayers at town board meetings, has no applicability to the constitutionality of prayers at public school board meetings. In *FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir. 2018), 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. 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." *Chino Valley*, 896 F.3d at 1142 (internal citations omitted).

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.

Students and parents have the right—and often have reason—to participate in school board meetings. It is coercive, embarrassing, and intimidating for nonreligious citizens to be required to make a public showing of their nonbelief (by not rising or praying) or else to 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. The school board, however, ought not to lend its power and prestige to religion, amounting to a governmental endorsement of religion which excludes the 24% of Americans who are nonreligious, including 38% of Americans born after 1987.<sup>2</sup>

It is unconstitutional for the Board to institute prayers at its meetings. Each Canton Local School District board member swears an oath to support the Constitution of the United States. We therefore request that you immediately refrain from scheduling prayers as part of future school board meetings to uphold the rights of conscience embodied in our First Amendment. Please inform us in writing at your earliest convenience of the steps you are taking to remedy this constitutional violation.

Sincerely,



Joseph McDonald  
*Patrick O'Reiley Legal Fellow*  
Freedom From Religion Foundation

JFM:jba

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<sup>2</sup> Robert P. Jones & Daniel Cox, *America's Changing Religious Identity*, PUBLIC RELIGION RESEARCH INSTITUTE (Sept. 6, 2017), available at [www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf](http://www.ppri.org/wp-content/uploads/2017/09/PRRI-Religion-Report.pdf).