

FREEDOM FROM RELIGION *foundation*

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November 11, 2021

SENT VIA EMAIL & U.S. MAIL: rjbarry@kaufcan.com

Robert J. Barry
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P.O. Box 3037
Norfolk, VA 23514

Re: Unconstitutional Prayer at School Board Meetings (Chesapeake Public Schools)

Dear Mr. Barry:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) regarding a constitutional violation occurring in Chesapeake Public Schools. It is my understanding that you represent the District, and that we worked with you to resolve an issue in the District in 2019. I hope that we can similarly resolve this new issue.

A concerned District parent has reported that the Chesapeake School Board opens its meetings with Christian prayer. The Board's agendas confirm that its meetings always begin with a scheduled prayer, and that these prayers are invariably led by Christian religious leaders. On November 8, 2021, the Board scheduled Reverend Dr. Tommy P. Smith from Divine Baptist Church to deliver the invocation. Chair Proffitt directed attendees to stand for the invocation. Reverend Smith then delivered a prayer:

Greetings to all. Let us pray. Heavenly Father, giver of every good and perfect gift, we come before Your presence with thanksgiving, knowing that You are indeed the giver of every good and perfect gift. We come together this evening to seek Your wisdom, guidance, courage, and strength. We ask that You bless the members of this assembly as they engage in meaningful discussions and help them to be wise in their deliberations and decision-making processes, not only for themselves but for the good of all that have placed their trust and confidence in their leadership. Lord, may we all take a moment and pause on this coming Thursday as a gesture of our sincere appreciation for our military veterans to thank them for their selfless service, countless contributions and sacrifices to a grateful nation. Grant us humility to seek Your will in all we say, and in all we do because all we accomplish is for Your greater glory, and for the service of humanity. And may Your hand of blessing abide with us now, henceforth and forever more as we seal this prayer in Your most holy and righteous name. Amen.

The October 25, 2021 meeting had a scheduled prayer led by Reverend Tracy Gregory of Immanuel Baptist Church that thanked God for “sending Your Son to die for us”:

It is my honor to lead this invocation this evening... proud also to be a Great Bridge High School wildcat class of 1980. Let's pray together. Lord, make us an instrument of Your peace. Where there is hatred, let us sow love, where there is injury, pardon, where there is doubt, faith, where there is despair, hope, where there is darkness, light, where there is sadness, joy. Father, grant that we may not so much seek to be consoled as to console, to be understood as to understand, to be loved as to love. For it is in giving that we receive, in pardoning that we receive pardon, and it is in dying that we are born into eternal life. Father, I pray You grant wisdom and strength for our school board members during these challenging days. I pray You guide and protect our students and teachers and staff. And we thank You for the privilege we have to be part of this caring community. Thank You for loving us and sending Your Son to die for us, and we pray this in Jesus' name. Amen.

We write to request that the Board immediately cease opening its meetings with Christian prayers in violation of the Establishment Clause of the First Amendment.

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 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 FFRF v. Chino Valley Unified Sch. Dist. Bd. of Educ.*, 896 F.3d 1132 (9th Cir.), en banc denied, 910 F.3d 1297 (9th Cir. 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); *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 the 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.

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)).

It is important to note that the U.S. Supreme Court’s decision in *Town of Greece v. Galloway*, permitting sectarian prayers at legislative meetings, has no applicability to the constitutionality of prayers at public school board meetings. In *Chino Valley*, 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.” *Id.* at 1142 (internal citations omitted).

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 participating) 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 alienates non-religious Americans. Non-religious Americans make up the fastest growing segment of the U.S. population by religious identification—35 percent of Americans are non-Christians, and this includes the more than one in four Americans who now identify as religiously unaffiliated.¹

It is unconstitutional for the Board to institute prayers at its meetings. We request that the Board 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 the Board is taking to remedy this constitutional violation.

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

¹ *In U.S., Decline of Christianity Continues at Rapid Pace*, PEW RESEARCH CENTER (Oct. 17, 2019), available at <https://www.pewforum.org/2019/10/17/in-u-s-decline-of-christianity-continues-at-rapid-pace/>.